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IN THE

Supreme Court of the United States

CLERK

THE WHARF (HOLDINGS) LIMITED, a Hong Kong company; WHARF COMMUNICATIONS INVESTMENTS LIMITED, a Hong Kong company; and STEPHEN NG, a Hong Kong citizen,

Petitioners,

v.

UNITED INTERNATIONAL HOLDINGS, INC., a Delaware corporation; and UIH ASIA INVESTMENT CO., a Colorado general partnership,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI (VOLUME TWO OF TWO)

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No. 97-1421

IN THE

United States Court Of Appeals

FOR THE TENTH CIRCUIT

UNITED INTERNATIONAL HOLDINGS, INC., a Delaware corporation; and UIH ASIA INVESTMENT CO., a Colorado general partnership,

Plaintiffs-Appellees,

v.

THE WHARF (HOLDINGS) LIMITED, a Hong Kong company; WHARF COMMUNICATIONS INVESTMENTS LIMITED, a Hong Kong compay; WHARF CABLE LIMITED, a Hong Kong company; and STEPHEN NG, a Hong Kong citizen,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

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June 30, 1998

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ARGUMENT

I. DISPUTES OVER A PLAINTIFF'S ALLEGED RIGHT TO PURCHASE STOCK ARE NOT FEDERAL SECURITIES LAW VIOLATIONS

UIH's argument for applying § 10(b) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78j(b) (the "Exchange Act"), stands or falls with its assumption that § 10(b) covers alleged misrepresentations of a party's intention to sell stock. That assumption is inconsistent with the three modern circuit court cases that have ruled on that issue. *Gurwara v. LyphoMed, Inc.*, 937 F.2d 380, 382-83 (7th Cir. 1991); *Hunt v. Robinson*, 852 F.2d 786, 787 (4th Cir. 1988); *Tully v. Mott Supermarkets, Inc.*, 540 F.2d 187, 194 (3d Cir. 1976); *see also Production Resource Group, L.L.C. v. Stonebridge Partners Equity Fund, L.P.*, No. 98 CIV. 466, 1998 WL 278300, at *5 (S.D.N.Y. May 22, 1998) (applying *Gurwara* to dismiss 10(b) claims); *Kamberos v. Gallas*, No. 96 C 5125, 1997 WL 119952, at *2-3 (N.D. Ill. March 14, 1997) (same).

UIH's assumption is fundamentally inconsistent with the purpose of the Exchange Act which is to proscribe financial misrepresentations made in connection with the purchase or sale of securities. As the Fourth Circuit observed in *Hunt v. Robinson*:

> The fundamental purpose of the Securities Exchange Act of 1934 is to implement a "philosophy of full disclosure," by providing participants in stock transactions with the information they need to make their investment decisions. That goal is not furthered by bringing within the ambit of § 10(b) claims amounting to breach of contract or common law fraud which have long been the staples of state law.

Hunt, 852 F.2d at 787-88 (*citing Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 477-78, 97 S. Ct. 1292, 1303 (1977); other citation omitted).

The holdings of the two cases relied upon by UIH do not support its position. *Luce v. Edelstein* did not involve misrepresentations of a party's intention to sell stock. *Luce v. Edelstein*, 802 F.2d 49 (2d Cir. 1986). *Luce* involved garden variety financial misrepresentations.[1] *Threadgill v. Black*, 730 F.2d 810 (D.C. Cir. 1984) (per curiam), is a cryptic opinion reversing a lower court's decision that a partially executed sale of stock is not the "purchase or sale" of a security under § 10(b). The court did not discuss whether § 10(b) should be construed to go beyond the proscription of misrepresentations relating to the value of securities.

By contrast, the Seventh Circuit's decision in *Gurwara v. LyphoMed, Inc.* is squarely applicable to the facts of this case. The plaintiff there alleged that the defendant misrepresented the nature of his rights under an option and prevented him from exercising it, just as UIH does. (UIH Br. at 10) The court held that he did not state a cause of action under § 10(b) because "this misrepresentation went only to Gurwara's opportunity to purchase the stock . . . . It in no way related to the value of that stock." *Gurwara*, 937 F.2d at 382.

In *Hunt v. Robinson*, the Fourth Circuit held that defendants' fraudulent refusal to sell stock to plaintiff pursuant to an option did not constitute a violation of § 10(b). The basis of the Fourth Circuit's decision was that "Hunt has pointed to no misrepresentations concerning the financial resources or assets of the then unformed company". *Hunt*, 852 F.2d at 787. In *Tully v. Mott Supermarkets, Inc.*, the Third Circuit similarly held that plaintiffs' complaint of defendants' allegedly fraudulent refusal to sell stock pursuant to an agreement did not constitute a violation of § 10(b). *Tully*, 540 F.2d at 194.

UIH's argument that these cases bar only breach of contract claims is a misreading. (UIH Br. at 33-34) The plaintiff in each

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[1] *Luce* is distinguished in *Production Resource Group*, 1998 WL 278300, at *7.

case alleged fraud. The Fourth and Seventh Circuits based their decisions on the fact that the purpose of the Exchange Act was to prohibit misrepresentations relating to the value of securities -- a rationale inconsistent with UIH's attempt to limit them to breach of contract cases. *Gurwara*, 937 F.2d at 382; *Hunt*, 852 F.2d at 787.

UIH's argument that "Wharf's claim . . . that the securities laws do not apply to 'disputes over a plaintiff's alleged right to purchase stock' is simply wrong" because the Exchange Act covers options misses the point. (UIH Br. at 31) Of course, the Exchange Act covers options. However, the purpose of the Exchange Act is to proscribe misrepresentations of value made in connection with the sale of securities, whether they be stocks, bonds or options, and UIH fails to state a § 10(b) violation because it alleges no such misrepresentation.

UIH's argument that it did allege a misrepresentation of value because Wharf's refusal to permit the exercise of the alleged option reduced the value of the option to zero is a *non sequitur*. Terrorists who bomb the Wharf cable system may reduce the value of an option to buy stock in that system, but they are not § 10(b) violators. The Seventh Circuit rejected that very argument in *Gurwara*. *Gurwara*, 937 F.2d at 382.

UIH's belated resort to rechristening the alleged exchange of oral promises on October 8, 1992 as a "sale" of an option is an unavailing attempt to create compliance with the Exchange Act. (*Compare* UIH Br. at 9, 31, *with* Aplt. App. at 83) UIH still fails to establish a § 10(b) violation because it has not proved that Wharf made any misrepresentation of the value of the securities involved.

UIH does not even address the controlling consideration in this case which is that the purpose of the Exchange Act -- to proscribe the dissemination of false financial information relating to the value of securities -- does not reach a party's alleged misrepresentations about its intention to sell stock.

II. UIH CANNOT BASE A § 10(b) CLAIM ON AN AGREEMENT WHICH IS UNENFORCEABLE UNDER THE STATUTE OF FRAUDS

UIH's statement that "most courts have said that it does not matter whether the contract is 'enforceable' under a state statute of frauds" is simply wrong. (UIH Br. at 34)

Since *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 95 S. Ct. 1917 (1975), federal courts have consistently held that a promise to sell a security unenforceable under the statute of frauds cannot support a § 10(b) claim. In *Kagan v. Edison Brothers Stores, Inc.*, the Seventh Circuit clearly held that a § 10(b) claim cannot be premised upon an unenforceable promise to sell securities:

> The statute of frauds would be a hollow doctrine if disappointed sellers could convert their contract claims into actions under Rule 10b-5. The principles animating § 8-319 and the doctrine of *Blue Chip Stamps* alike require a conclusion that an unenforceable oral agreement is not a "contract" to purchase or sell securities.

Kagan v. Edison Bros. Stores, Inc., 907 F.2d 690, 691 (7th Cir. 1990). The Eleventh Circuit reached the same conclusion in *Pelletier v. Stuart-James Co., Inc.*:

> [A] person who alleges a violation of Rule 10b-5 must demonstrate that he is an actual purchaser or seller, or that he was party to a legally enforceable contract to purchase or sell securities.

Pelletier v. Stuart-James Co., Inc., 863 F.2d 1550, 1555 (11th Cir. 1989); *see also Southeastern Waste Treatment, Inc. v. Chem-Nuclear Sys., Inc.*, 506 F. Supp. 944, 953 (N.D. Ga. 1980).

None of UIH's cited cases hold that a plaintiff may base a § 10(b) claim on an agreement to purchase securities which is

unenforceable under state law. *Threadgill* involved a contract which was enforceable under state law. As the Seventh Circuit observed in *Kagan*:

> *Threadgill* . . . reveals that the certificates were paid for . . . which makes the promise enforceable to that extent. . . . We do not understand *Threadgill* to hold that an oral agreement that could not be enforced in any respect under § 8-319 of the UCC is nonetheless a "sale" within the meaning of the securities laws.

Kagan, 907 F.2d at 691 n.*.

Fogarty v. Security Trust Co., 532 F.2d 1029 (5th Cir. 1976), did not even involve the question at issue. The plaintiff in *Fogarty* had purchased the securities in question and was complaining of the seller's alleged misrepresentation of an asset of the purchased company.

The holding of *Chariot Group, Inc. v. American Acquisition Partners, L.P.*, is actually inconsistent with UIH's argument. *Chariot Group, Inc. v. American Acquisition Partners, L.P.*, 751 F. Supp 1144 (S.D.N.Y. 1990), *aff'd*, 932 F.2d 956 (2d Cir. 1991) (Table). The court in *Chariot* dismissed plaintiff's claim because plaintiff did not have an enforceable agreement:

> Absent due execution of the Agreement . . . there was no agreement to sell securities, and hence nothing on which to predicate jurisdiction under 15 U.S.C. § 78j(b) . . . .

Id. at 1152. In short, the Seventh and Eleventh Circuits and a district court have held that an alleged agreement to acquire securities which is not enforceable under the statute of frauds

cannot support a § 10(b) claim. UIH has cited no case holding the contrary.[2] (UIH Br. at 34-35)

III. THE PARTIES' RELATIONS WERE GOVERNED BY HONG KONG LAW, NOT THE EXCHANGE ACT

In seeking to avoid the applicability of Hong Kong law, UIH simply assumes that the fact that federal securities law *might* apply to the transaction concludes the argument. That assumption fails to address the relevant legal question which is whether Hong Kong law or U.S. law applies under governing choice of law principles.

Both the Supreme Court in *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 516, 94 S. Ct. 2449, 2455-56 (1974), and this Court in *Riley v. Kingsley Underwriting Agencies, Ltd.*, 969 F.2d 953 (10th Cir. 1992), have held that if choice of law principles render the Exchange Act inapplicable, the district courts have no jurisdiction even if the Exchange Act would have been applicable but for the choice of law considerations.

The plaintiff in the *Riley* case sought to sue certain Lloyd's insurance syndicates under § 10(b) of the Exchange Act for alleged misrepresentations in connection with his decision to invest in Lloyd's. *Riley v. Kingsley Underwriting Agencies, Ltd.*, 969 F.2d 953, 954-56 (10th Cir. 1992). "The district court held that the arbitration and choice of forum and law provisions in the contracts were valid and enforceable. *After concluding that it lacked further jurisdiction*, the district court dismissed

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[2] UIH's attempt to create a purchase or sale by rechristening the alleged oral option as the "sale" of an option is foreclosed by *Kagan* and *Pelletier*. UIH's renaming of the alleged oral agreement does not alter the fact that UIH remains without an enforceable right to acquire securities.

all of Riley's claims, without prejudice." *Id.* at 955 (emphasis added). This Court affirmed, holding:

> Riley suggests that he is being deprived of all substantive rights under the federal securities laws and therefore should be relieved of his agreements on public policy grounds. . . . When an agreement is truly international, as here, and reflects numerous contacts with the foreign forum, the Supreme Court has quite clearly held that the parties' choice of law and forum selection provisions will be given effect.

Id. at 957 (citations omitted).

This case is as clearly "international" as *Riley* and Hong Kong law is just as clearly applicable, as set forth in Appellants' Brief (Wharf Br. at 20-24). The district court should have so found and dismissed the case for lack of jurisdiction, as the district court did in *Riley*.

The cases cited by UIH do not consider the choice of law question raised by Wharf. (UIH Br. at 28-30) They hold only that the federal securities laws may reach transactions having foreign dimensions. They say nothing about whether foreign law may displace the federal securities laws under choice of law principles and deprive district courts of subject matter jurisdiction. By contrast, the decisions in *Alberto-Culver* and *Riley* hold that foreign law may do exactly that. As the facts proven below establish, this is such a case. Because Hong Kong law is applicable, the Exchange Act is not, and UIH does not state a claim arising under the laws of the United States pursuant to 28 U.S.C. § 1331.

UIH's argument that Wharf is barred from relying on Hong Kong law rests on a "rule" UIH extracts from a passing comment in *Eli Lilly and Co. v. Home Insurance Co.*, 764 F.2d 876 (D.C. Cir. 1985), to the effect that a court should determine whether the laws of two competing jurisdictions differ before making a choice of law decision. While there is nothing wrong

with that view as a prudential approach to judicial economy, it is irrelevant. There is nothing in *Eli Lilly* which suggests that a district court should abstain from deciding a choice of law question upon which its jurisdiction depends. Federal Rule of Civil Procedure 12(h)(3) requires that such questions be decided whenever they arise.

UIH's argument that Wharf relied on Hong Kong law solely for the purpose of its forum non conveniens motion misstates the record. (UIH Br. at 30) Wharf argued that UIH had no securities law claim in its motions to dismiss and for summary judgment: "Hong Kong law applies to this dispute. Because UIH has not alleged any violations of Hong Kong corporate or securities law, it has no valid securities claim. On this basis alone, the Court should dismiss all of UIH's claims." (Aplt. App. at 207) Wharf preserved the issue at trial by securing admissions that Hong Kong law applied and asking for appropriate instructions. (Aplt. App. at 1542, 1544-45, 3204-05, 4550) The district court recognized that issues raised by the tendered instructions were preserved for appeal. (Aplt. App. at 10036) Finally, Wharf did point out that Hong Kong law differed from U.S. law. (Aplt. App. at 770-71)

IV. THE ENTIRE CASE SHOULD BE DISMISSED UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(b)(1) OR 12(b)(6) BECAUSE UIH HAS FAILED TO ESTABLISH A CLAIM ARISING UNDER § 10(b) OF THE EXCHANGE ACT

Because UIH's only claim to federal jurisdiction was based on its assertion that it had a claim arising under § 10(b) of the Exchange Act, the district court should have dismissed the entire case, including the pendent state claims, on Wharf's motion to dismiss or for summary judgment. UIH's failure to allege a claim arising under § 10(b) was obvious from the complaint which alleged a claim that did not involve misrepresentations of the value of a security or an enforceable contract to purchase stock. All grounds for dismissal could

have been readily determined on a motion under Rule 12 or Rule 56, both of which Wharf made. (Aplt. App. at 36-70; 100-126; 183-262; 767-818)

UIH seeks to avoid dismissal by arguing that its federal claim was not so clearly "insubstantial" as to make jurisdictional dismissal under Federal Rule of Civil Procedure 12(b)(1) appropriate. UIH's argument simply ignores the authorities which mandate dismissal of cases such as this whether or not the reason for dismissal is deemed "jurisdictional". *Tully*, 540 F.2d at 196; *Lechtner v. Brownyard*, 679 F.2d 322, 327-28 (3d Cir. 1982). As the Third Circuit said:

> If it appears that the federal claim is subject to dismissal under F.R.Civ.P. 12(b)(6) or could be disposed of on a motion for summary judgment under F.R.Civ.P. 56, then the court should ordinarily refrain from exercising jurisdiction in the absence of extraordinary circumstances.

Tully, 540 F.2d at 196 (citation omitted).

On strikingly similar facts, the Third Circuit in *Tully* required dismissal of the pendent state claims after their adjudication on the merits.[3] The Third Circuit's dismissal did not depend upon a finding that the case should have been dismissed under Fed. R. Civ. P. 12(b)(1). *Id.* at 195. The *Tully* case is not distinguishable and this Court should dismiss this case for the same reason.

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[3] In a very recent decision, the Seventh Circuit similarly dismissed an action for lack of subject matter jurisdiction despite protracted prior proceedings. *See Indiana Gas Co., Inc. v. Home Ins. Co.*, 141 F.3d 314 (7th Cir. 1998).

V. UIH'S CLAIMS ARE BARRED BY THE STATUTE OF FRAUDS

UIH's argument that the statute of frauds does not apply to this case because "the Option that Wharf [allegedly] sold to UIH is not a 'security'" is based on a misconception. (UIH Br. at 36) The "security" at issue is not UIH's alleged option; it is the common stock of CNCL which UIH claimed an "option" to purchase. UIH's alleged option is the oral agreement to purchase a security which is unenforceable under Colorado's Statute of Frauds, C.R.S. § 4-8-319.

There can be no question that the common stock of a closely-held corporation such as CNCL is a security governed by the statute of frauds. *See* C.R.S. § 4-8-102 cmt. 2 (1995) ("Interests such as the stock of closely-held corporations, although they are not actually traded upon securities exchanges, are intended to be included within the definitions of both certificated and uncertificated securities by the inclusion of interests 'of a type' commonly traded in those markets.").[4] UIH's argument is also inconsistent with the Colorado Supreme Court's en banc opinion in *Kiely v. St. Germain*, 670 P.2d 764 (Colo. 1983) (en banc), which treated the stock of a closely-held corporation as a security.

UIH's argument that its alleged oral option is not barred by § 4-8-319 because of its alleged partial performance and/or

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[4] UIH's alleged option is also a "security" covered by C.R.S. § 4-8-319 because there is no rational basis for distinguishing the common stock of a closely-held corporation from an option to acquire such stock for statute of frauds purposes. Both are securities "of a type" commonly traded upon securities exchanges. *See, e.g., Mortimer B. Burnside & Co. v. Havener Sec. Corp.*, 25 A.D.2d 373, 374, 269 N.Y.S.2d 724, 726 (N.Y. App. Div. 1966) (per curiam).

promissory estoppel is foreclosed by the Colorado Supreme Court's en banc decision in *Nelson v. Elway*:

> We hold that when a defendant makes a conditional representation to a plaintiff . . . any detrimental change of position on the part of the plaintiff prior to the occurrence of the condition is unreasonable as a matter of law.

Nelson v. Elway, 908 P.2d 102, 110 (Colo. 1995) (en banc). UIH's own documents establish that its alleged option to acquire the stock of CNCL was conditional upon the approval of the board of Wharf or its subsidiaries. (Add. at 623)

UIH attempts to avoid the impact of *Elway* by arguing that "reasonable reliance is not an element of the part performance doctrine". (UIH Br. at 42 n.73) That unsupported assertion is directly contradicted by the Colorado Supreme Court. As that court said in *Kiely*:

> This court has previously recognized that a plaintiff's full or partial performance of an oral agreement, *when done in reasonably justifiable reliance thereon*, is sufficient to overcome a statute of frauds defense.

Kiely, 670 P.2d at 769 (emphasis added).

The jury verdict must be vacated because of the district court's failure to charge the jury on the statute of frauds as required by this Court in *Lobato v. Bleidt*, Nos. 94-1264, 94-1275, 1995 WL 307609, at *1 (10th Cir. May 11, 1995) (unpublished disposition), which held that claims of partial performance are factual issues that must be submitted to a jury. The principle of that decision is equally applicable to all issues of fact raised by a party's attempt to avoid the statute of frauds.

UIH's attempt to avoid the consequences of the court's failure to charge the jury by speculation about what the jury might have found if it had been properly instructed should be rejected. UIH's claim that the "jury accepted . . . Elsner's and

Schneider's testimony that (at UIH's insistence) Wharf's [alleged] promises on October 8 were unconditional" is sheer speculation. (UIH Br. at 44) At trial, UIH strenuously argued that the nonoccurrence of any "conditions" which Wharf imposed upon its alleged promise should be excused because Wharf prevented their occurrence. (Aplt. App. at 10161-63) It is therefore impossible to know whether the jury: (a) found that no "condition" was imposed, or (b) excused the nonoccurrence of the "condition".

While conditions to the *performance* of a contract may be excused because satisfaction of the condition is frustrated, that is *not* the case when dealing with a condition to the *formation* of the agreement. *See* Restatement (Second) of *Contracts* § 224 cmt. c (1979).[5] The nonoccurrence of a "condition", such as board approval, to the formation of a contract, for any reason, prevents the formation of a contract and the nonoccurrence of that "condition" cannot be excused by the jury because all contractual obligations rest on the parties' prior consent.

UIH's attempt to excuse the district court's failure to charge the jury as required by *Lobato* on the grounds that it gave the customary consideration instruction and speculation about what the jury "must" have decided is unacceptable. The proper statute of frauds instruction would have instructed the jury that an oral agreement could not bind Wharf unless certain specific facts were proven. That instruction would have precluded a finding of contract based upon an exchange of oral promises. By contrast, the consideration instruction *invited* such a finding: "If you find that in exchange for the option, *UIH*

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[5] "Necessity of a contract. In order for an event to be a condition, it must qualify a duty under an existing contract. Events which are part of the process of formation of a contract, such as offer and acceptance, are therefore excluded under the definition in this section." Restatement (Second) of *Contracts* § 224 cmt. c (1979).

promised to provide any services to the defendant, then you must find that there was consideration." (Aplt. App. at 10376) (emphasis added)

The statute of frauds instruction would have required that the jury find that any alleged partial performance be: (1) substantial; (2) "required by the oral contract"; and (3) "fairly referable to no other theory besides that allegedly contained within the oral agreement". (Aplt. App. at 1523 (citing *Elway*, 908 P.2d at 110)) No one can rationally infer the jury's response to that instruction from a verdict rendered on a boiler-plate consideration instruction.

The district court's failure to instruct the jury on the statute of frauds requires vacatur of all the liability verdicts. That failure to instruct means UIH failed to prove that it had an enforceable contractual right to purchase the stock of CNCL. Because the jury's damage award on every count (other than the negligent misrepresentation claim) awarded UIH the precise amount of the lost profit claimed by UIH as a result of its inability to purchase the stock of CNCL, all of those awards necessarily depend upon the premise that UIH possessed an enforceable contract right to purchase the CNCL stock.

The invalidity of those verdicts is a logical consequence of the court's failure to give the required statute of frauds instruction. Wharf's entitlement to the vacatur of those verdicts is in no way dependent upon any additional requests for instruction. (UIH Br. at 44) Wharf argued generally that UIH's claim was barred by the statute of frauds. (Aplt. App. at 208, 217-18) It was UIH's burden to prove its injury on all of its tort claims. UIH argued against the instruction. The district court's acceptance of that improper argument resulted in UIH's failure to prove any compensable tort injury.

UIH's attempt to avoid the consequences of the court's failure fails to deal with the applicable law. Contrary to UIH's argument that "[n]o damages issue was before the court" in

Brody v. Bock (UIH Br. at 45), the Colorado Supreme Court there held:

> The content of the allegedly fraudulent statement *is material not for the purpose of requiring Brody to perform the promise* but for the purpose of establishing that Bock acted reasonably but detrimentally in justifiable reliance upon the false statement.

Brody v. Bock, 897 P.2d 769, 776 (Colo. 1995) (en banc) (emphasis added). The court also held: "Bock may not recover contract damages in this case". *Id.* at 775 n.6. In *Brody*, the Colorado Supreme Court thus expressly held that a fraud plaintiff claiming an unenforceable contract right may recover only reliance damages.

In *Pelletier*, the Eleventh Circuit specifically held that an unenforceable promise cannot constitute compensable damage in a fraud case:

> The law is clear that an action for fraud may not be predicated on inducing a party to enter into an unenforceable contract.

Pelletier, 863 F.2d at 1556. Contrary to UIH's argument, the Eleventh Circuit stated that that limitation is applicable to common law fraud as well as § 10(b). (*Compare* UIH Br. at 45 n.77, *with Pelletier*, 863 F.2d at 1559) The Eleventh Circuit reached the same conclusion in *Gregg v. U.S. Industries, Inc.*, 715 F.2d 1522, 1531 (11th Cir. 1983). The Fifth and Ninth Circuits reached the same conclusion as to common law fraud claims in *Cohen v. Pullman Co.*, 243 F.2d 725, 728 (5th Cir. 1957), and *Caplan v. Roberts*, 506 F.2d 1039, 1041-42 (9th Cir. 1974) (per curiam). All of these cases bar fraud claims for contractual profits based on unenforceable contract claims. None of the cases cited by UIH holds the contrary.

Consequently, the district court's failure to charge the jury on the statute of frauds requires vacatur of all of UIH's breach

of contract and fraud claims. The jury verdicts as to UIH's federal and state securities law claims must also be vacated because each requires proof of an enforceable right to acquire stock as shown at p. 4-5, *supra*. UIH's recovery on its fiduciary duty claim is barred because proof of the alleged joint venture is barred by § 38-10-112 of the Colorado Statute of Frauds because the alleged joint venture could not be performed within a year and by § 4-8-319 because the only duty allegedly breached was Wharf's failure to sell UIH the stock of CNCL.[6]

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[6] UIH's contention that § 38-10-112 does not bar UIH's claimed oral option because nothing "'affirmatively excluded' UIH from making all required payments [of shareholder capital] within a year" is untenable. (UIH Br. at 38) UIH admits that the exercise price of the alleged option was 10% of the shareholder capital requirement for the cable project "to be paid in over several years". (UIH Br. at 56 n.93) Courts have repeatedly recognized that agreements in which a party promises to share in the losses and profits of an ongoing concern fall within the statute of frauds:

> There is nothing inherent in this agreement to share losses in a going business which would limit its operation to a period of one year. An oral agreement to enter into a new business which will continue indefinitely has been held to [fall within the prohibition of the statute of frauds].

Weinsier v. Soffer, 358 So. 2d 61, 63 (Fla. Dist. Ct. App. 1978); *see also Bross v. Wallace*, 600 So. 2d 1198, 1199 (Fla. Dist. Ct. App. 1992) (per curiam).

The cases upon which UIH relies do not establish a contrary rule. *Kuhlmann v. McCormack*, 116 Colo. 300, 180 P.2d 863 (1947), and *Zimmerman v. First Federal Savings and Loan Association of Rapid City*, 848 F.2d 1047 (10th Cir. 1988), both involved obligations to repay loans which could have been discharged within a year. *Clark v. Perdue*, 70 Colo.

Because UIH had no enforceable right to purchase that stock, Wharf had no legal duty to sell it. "The concept of fiduciary duty cannot be used to enforce promises unenforceable under contract law." *Phillips v. Chevron U.S.A., Inc.*, 792 F.2d 521, 525 n.2 (5th Cir. 1986).

VI. UIH'S TORT CLAIMS ARE BARRED BY THE ECONOMIC LOSS RULE

While UIH appears to admit that Colorado's Economic Loss Rule applies to negligence claims, it also (and in contradiction) argues that tort claims involve duties "separate from" contractual obligations and, therefore, "the plaintiff can recover in tort, even if the plaintiff also has contractual remedies". (*Compare* UIH Br. at 53, lines 8-10, *with* UIH Br. at 53, lines 13-14)

First, it is clear beyond argument that Colorado has adopted the Economic Loss Rule. "The economic loss rule was adopted by the Colorado Court of Appeals in *Jardel Enter., Inc. v. Triconsultants, Inc.*, 770 P.2d 1301, 1303-05 (Colo.App.1988)." *Colorado Nat'l Bank of Denver v. Adventura Assocs., L.P.*, 757 F. Supp. 1167, 1172 (D. Colo. 1991). None of the cases cited by UIH holds that the Economic Loss Rule is not applicable in Colorado. Neither *H & H Distributors, Inc. v. BBC International, Inc.*, 812 P.2d 659 (Colo. Ct. App. 1990), nor *Brody v. Bock* even mention the Economic Loss Rule.

Second, UIH's argument based on its observation that its tort claims involve duties "separate from" obligations arising under the law of contract is a *non sequitur*. (UIH Br. at 53) All torts involve duties "separate from" the duties imposed by contract law. Acceptance of UIH's argument would require

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589, 203 P. 655 (1922), involved a contract the terms of which did not make performance within a year impossible.

total rejection of the Economic Loss Rule, which, as shown above, has been adopted by the State of Colorado.

Third, UIH's cryptic reference to the fact that the Economic Loss Rule does not bar tort recovery for "independent" torts is irrelevant. (UIH Br. at 54-55) All of the cases relied upon by UIH involved misrepresentations other than representations of the intent to perform the contract. UIH did not allege that Wharf committed any tort independent of alleged misrepresentations of Wharf's intent to sell UIH the stock of CNCL. UIH alleged only that Wharf misrepresented its intent to perform its alleged contract.

In a recent, carefully reasoned opinion, the Eighth Circuit held that the Economic Loss Rule bars claims of both negligent and intentional misrepresentation. In *AKA Distributing Co. v. Whirlpool Corp.*, the Eighth Circuit dealt with a case in which "the Minnesota Supreme Court ha[d] not addressed whether the economic loss doctrine bars fraud and misrepresentation torts". *AKA Distrib. Co. v. Whirlpool Corp.*, 137 F.3d 1083, 1086 (8th Cir. 1998). The Court held: "We think the Minnesota Supreme Court would resolve the legal issue in this case by holding that, in a suit between merchants, a fraud claim to recover economic losses must be independent of the Article 2 contract or it is precluded by the economic loss doctrine." *Id.* at 1087. This Court should reach the same conclusion and hold that the Economic Loss Rule bars UIH's claims of negligent and intentional torts.

UIH's attempt to avoid application of the Economic Loss Rule on grounds of waiver should be rejected. UIH admits that Wharf raised the issue in its motion for summary judgment. (UIH Br. at 52) UIH did not argue that the Economic Loss Rule was limited to cases of negligent misrepresentation. The district court rejected the Economic Loss Rule on grounds which applied to all of UIH's tort claims. Because the Economic Loss Rule bars UIH's tort claims as a matter of law,

no request for a jury instruction was appropriate.[7] Wharf raised the Economic Loss Rule again in its post-judgment motions. (UIH Br. at 53) Contrary to UIH's argument, Wharf did *not* limit its Economic Loss Rule argument to claims of verdict inconsistency. (Aplt. App. at 232) And UIH did *not* argue that Wharf had waived its objection based on the Economic Loss Rule in its briefs or at oral argument below.

VII. THE DOCUMENTARY EVIDENCE CONCLUSIVELY PROVES THAT WHARF AND UIH INTENDED TO BE BOUND ONLY BY A DEFINITIVE WRITTEN AGREEMENT APPROVED BY THEIR BOARDS OF DIRECTORS

The consequences of the parties' negotiations from June 1992 through November 1993 are reflected in a set of critical documents which UIH seeks to obscure by accusing Wharf of "quoting out of context from a handful of the 1600 trial exhibits". (UIH Br. at 48) The critical documents are five draft Letters of Intent dated August 24, September 8, September 10, September 16 and September 19, 1992; four draft Shareholders' Agreements dated September 16, October 26, November 4 and November 19, 1992; and five draft Memoranda of Understanding ("MOU") dated April 30, June 29, July 13, July 15 and November 5, 1993. These are the documents which constitute the documentary history of the parties' negotiations. And they are fundamentally inconsistent with UIH's oral option story.

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[7] Wharf raised the Economic Loss Rule as a bar to UIH's negligent misrepresentation claims during the jury instruction conference and UIH opposed its application to any claim. (Aplt. App. 1289, 1293-94)

Those documents establish the following propositions which are fatal to UIH's alleged oral option claims:

(1) The draft Letters of Intent, MOUs and Shareholders' Agreements conclusively establish that UIH and Wharf understood throughout that any binding obligation to sell stock in the cable TV project had to be embodied in a written document duly executed by the parties. It is undisputed that this never occurred.

(2) The draft Letters of Intent and MOUs conclusively establish that any binding obligation to sell stock in the cable TV project had to be approved by the parties or their boards of directors. It is undisputed that no such approval was given.

(3) All drafts of the Shareholders' Agreement were stock purchase agreements, not option agreements. As such, they were completely inconsistent with the alleged oral option. It is undisputed that UIH did not amend those drafts to embody the alleged oral option.

UIH seeks to avoid the legal significance of these documents by arguing that the relevant case law does not apply to jury verdicts (UIH Br. at 49) and that this Court must accept the self-serving oral testimony of UIH officers Schneider and Elsner as to the alleged oral option. UIH's argument ignores the fact that the case law relied upon by Wharf has been applied to the granting of summary judgments, in which the standard is that "no reasonable trier of fact could find in favor of the nonmoving party". *Chariot Group*, 751 F. Supp. at 1148 (citation omitted); *see also R.G. Group, Inc. v. Horn & Hardart Co.*, 751 F.2d 69, 77 (2d Cir. 1984).

UIH also ignores the fact that the disappointed plaintiff in each of these cases was claiming an oral agreement in conflict with the written record of the parties' negotiations and that the court in each case rejected the alleged oral agreement. *See, e.g., Aircraft Sales of California, Inc. v. Insured Aircraft Title Serv.,*

Inc., No. 90-6125, 1991 WL 274101, at *7 (10th Cir. Dec. 18, 1991) (unpublished disposition) (affirming summary judgment); *Winston v. Mediafare Entertainment Corp.*, 777 F.2d 78, 81-83 (2d Cir. 1986) (reversing district court contract finding); *R.G. Group*, 751 F.2d at 77 (affirming summary judgment); *Reprosystem, B.V. v. SCM Corp.*, 727 F.2d 257, 262-63 (2d Cir. 1984) (reversing district court contract finding); *Chariot Group*, 751 F. Supp. at 1149-52 (granting summary judgment). The key point in all of these cases was that the written record of the parties' negotiations contradicted the plaintiffs' claim of oral agreement. This case presents the same exact fact pattern.

UIH proceeds with a severely distorted description of the record below, alleging "a Prolonged Course of Deliberate Deception" (UIH Br. at 18) in which Wharf personnel "repeatedly assured UIH of its [alleged] right to invest" (UIH Br. at 18, *citing* pp. 8-11 generally) and told "UIH that its [alleged] ~~ri~~ghts to invest were unconditional" (UIH Br. at 18, *citing, e.g.*, Aplt. App. 2409:1-11:2).

Examination of UIH's record references cited in support of its extravagantly alleged scheme to defraud will reveal that the cited evidence of Wharf's communications boils down to oral testimony by self-interested UIH officers as to Mr. Ng's alleged oral promise of October 8, 1992 and some conflicting testimony about an earlier meeting. (UIH Br. at 18-20) Examination of the cited record will reveal no testimony by UIH or any one else of any communication by Wharf to UIH after October 8, 1992 which "reaffirmed" or "reassured" UIH of its alleged oral option.[8]

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[8] UIH's citations to the testimonial record direct this Court to no statement by Wharf to a UIH representative expressly or impliedly "reassuring" UIH of any "right to invest". The only statements that UIH points to are ambiguous statements that Wharf considered UIH to be in some sense a partner -- a phrase

UIH's extravagantly alleged scheme to defraud thus reduces to the uncorroborated testimony of Messrs. Elsner and Schneider about what happened at a meeting with Mr. Ng on October 8, 1992, which is squarely contradicted by the documentary history of the parties' negotiations. The draft Letters of Intent spanning the period August 24, 1992 to September 19, 1992 all clearly state:

> This letter does not create legally binding and enforceable obligations. . . . Each of the parties will negotiate in good faith, and use all reasonable endeavours to conclude the terms of a formal, legally binding shareholders' agreement between them . . . .

(Add. at 43, 46-47) Those Letters of Intent conclusively establish that the parties were proceeding on the assumption that no "legally binding obligation" would arise prior to the completion and execution of a complex written Shareholders' Agreement. (Add. at 43, 53, 58, 121, 128, 135, 142)

The parties' intention that they not be bound except by an instrument in writing is further evidenced by the fact that the parties negotiated the anticipated written Shareholders' Agreement through four drafts dated September 16, October 26, November 4 and November 19. That intention is still further proven by the fact that UIH drafted written MOUs when it sought to renew negotiations during the period from April 30, 1993 through November 5, 1993. UIH's response is the bald assertion that "there is no evidence that the parties 'stated an intention not to be bound absent a written contract'" (UIH Br. at 50, citing, for evidentiary support, a jury instruction) -- an argument which is directly contradicted by the draft Letters of Intent, the parties' continued negotiation of the draft Shareholders' Agreement, and the later MOUs.

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which does *not* connote any specific rights of investment.

That draft Shareholders' Agreement was, itself, inconsistent with UIH's alleged option because it was a stock purchase agreement, *not* an option agreement:

> Immediately following the signing of this Agreement the Shareholders shall deliver to the Company unconditional applications in writing addressed to the Company for the allotment to them at par of the following number of Shares respectively:-
>
> Wharf : [ ] Shares
> UIH : [ ] Shares
> NYNEX : [ ] Shares

(Add. at 356) There is simply no explanation for UIH's failure to attempt to amend the draft Shareholders' Agreement.

UIH's claim that its witnesses at trial "identified where in the drafts the option language was to be inserted" is a litigation-inspired tactic. (UIH Br. at 49) It most certainly does not explain why UIH did not draft language embodying the alleged option despite the fact that UIH's Mr. Fries worked on the draft Shareholders' Agreement through three drafts dated October 26, November 4 and November 19, shortly after the alleged October 8 oral agreement. Mr. Fries' testimony "identifying" where he would have amended the Shareholders' Agreement does not explain why he did not do so.

UIH's oral option story is also inconsistent with the fact that UIH did nothing to propose any written agreement with Wharf until it sent a draft MOU on April 30, 1993. It is inconceivable that UIH would have done nothing for six months after the alleged oral option, if such an agreement had in fact been made, particularly in light of UIH's supposed concern because it was "stung" by the fact that Wharf's September 1992 bid to the Government expressly negated any UIH investment right. When UIH did send its draft MOU on April 30, 1993, it was completely inconsistent with UIH's oral option story. There is no mention of the alleged October 8

agreement in any of the draft MOUs. To the contrary, Mr. Fries' transmittal letter of April 30 states: "We left the issue of UIH's ownership in Stephen's [Mr. Ng's] hands." (Add. at 398)

All drafts of the Letters of Intent in 1992 and of the MOUs in 1993 consistently provided that any investment by UIH remained subject to approval by the parties or their boards of directors. The very last MOU drafted by UIH was dated November 5, 1993 and stated "UIH's investment in CNCL is conditioned upon the approval of the board of UIH and WCIL". (Add. at 623) In his letter transmitting the MOU, Mr. Schneider said: "The contract establishes the basic terms of UIH's investment and confirms our good faith negotiations but would be subject to both of our board's approval." (Add. at 620) Mr. Schneider's November 5, 1993 letter and the enclosed draft MOU is flatly inconsistent with his testimony that Wharf's alleged promise of October 8, 1992 was not subject to the condition of board approval. (UIH Br. at 13)

UIH's oral option claim is flatly inconsistent with the documentary record of the parties' negotiations which makes it clear that: (1) the parties did not intend to be contractually bound prior to execution of a formal written agreement; (2) the parties intended to enter into a stock purchase agreement, not an option agreement; and (3) the parties did not intend to be contractually bound before approval by the parties or their boards of directors, neither of which ever took place. Under the cases cited above, the inconsistency between the written documentation and UIH's oral option claims is more than sufficient to support judgment for Wharf.

VIII. UIH FAILED TO PROVE THE VALUE OF ITS OPTION; THE JURY'S DAMAGE VERDICTS WERE BASED ON UIH'S MISREPRESENTATION

UIH's argument in support of its $67,000,000 damages award transgresses the limits of responsible advocacy. There is

no doubt that the Jones testimony values 10% of the stock of CNCL. It does not value an option to buy 10% of the stock of CNCL. These two values are obviously not the same. The Jones testimony cannot be, at one and the same time, a valuation of both 10% of the stock of CNCL and an option to buy that stock for, *e.g.*, $50,000,000. It has to be one or the other. An option to buy 10% of the stock of the Brown Palace Hotel for $50,000,000, is obviously worth $50,000,000 less than 10% of the stock of the Brown Palace Hotel. UIH's counsel confused the jury by misrepresenting the Jones testimony to be a valuation of the option of which UIH was allegedly deprived. (Aplt. App. at 10163-64)

UIH's counsel is attempting to get away with the same misrepresentation in this Court. Whether the Jones testimony values 10% of the stock of CNCL or an option to purchase 10% of the stock of CNCL for, *e.g.*, $50,000,000, is not a matter of opinion. It is a matter of fact. UIH's counsel's representation that the Jones testimony is a valuation of that option is not advocacy. It is a misrepresentation.

There is absolutely no basis for UIH's argument that the Jones testimony is a valuation of the option. Whether this Court looks at Mr. Jones' direct testimony (Aplt. App. at 8232, 8248, 8275), his cross examination (Aplt. App. at 8447) or the Jones Report itself, which UIH sought to exclude from the record on appeal (Add. at 647-86), it is crystal clear that he is valuing the stock of CNCL.

UIH's entire argument that Mr. Jones valued its option hinges on the fact that Mr. Jones deducted capital expenditures or shareholder investment in arriving at his valuation. That "argument" misrepresents the significance of the deduction of capital expenditures or shareholder investment in the Jones testimony. Mr. Jones performed a conventional discounted cash flow ("DCF") valuation of the stock of CNCL and 10% of its stock. It is beyond dispute that in conducting a DCF valuation of an enterprise, the analyst deducts all expenditures -- current

and capital -- from all revenues. *See, e.g.*, Bradford Cornell, *Corporate Valuation* 108-09 (1993). The deduction of capital expenditures or shareholder investments in a DCF analysis of enterprise value is a recognized and necessary step in determining the value of an enterprise. The fact that Mr. Jones deducted CNCL's capital expenditures or the shareholders' investments does *not* transform his valuation of 10% of CNCL into a valuation of an option to purchase 10% of CNCL for $50,000,000. The Jones testimony remains a study of the value of the TV venture -- exactly what Mr. Jones said it was -- and no reputable investment banker or other informed professional would say otherwise.

UIH's counsel compound their attempt at misrepresentation by urging that Mr. Jones' answers to questions put by counsel, which asked about the "'value lost by UIH'", prove that Mr. Jones valued UIH's alleged option. (UIH Br. at 58) This argument further exposes counsel's misrepresentations to the jury. By those questions, UIH's counsel deliberately elicited testimony which was designed to confuse the jury into believing that Mr. Jones had valued the option of which UIH was allegedly deprived.

UIH's counsel's argument to the jury that the Jones testimony valued UIH's interest in CNCL "'over and above the investment'" was another deception. (*See* UIH Br. at 60) UIH's counsel used that phrase to mislead the jury into believing that Mr. Jones' deduction of capital expenditures transformed his study into a valuation of the option. It was not and is not a valuation of the option. And UIH's counsel's reliance on the phrase "over and above the investment" remains a misrepresentation when repeated in this Court.

UIH's counsel's references to other testimony relating to UIH's alleged damages are irrelevant. By awarding UIH the exact amount presented by the Jones testimony-- $67,000,000-- the jury adopted his conclusion. No one else at trial placed that valuation before the jury. The only reasonable conclusion is

that the jury was misled by UIH's counsel's misrepresentation of the Jones testimony in reaching its $67,000,000 verdict.

UIH's claim that Wharf's counsel did not challenge Mr. Jones' testimony on the ground that he had not valued UIH's alleged option is unsupportable on the record below. Wharf's counsel repeatedly pressed Mr. Jones to admit that he was not valuing the option. (Aplt. App. at 8447-48) Wharf's counsel stressed Mr. Jones' failure to value the option in closing argument. (Aplt. App. at 10255, 10272) The drastic overstatement of UIH's damages by Mr. Jones was a logical consequence of the fact that Mr. Jones did not value UIH's alleged option. Wharf reiterated its objections in its post-trial motions. (Aplt. App. at 1602-04, 1629-33) No more can reasonably be required.

CONCLUSION

Appellants rely on their initial brief for the remaining arguments and respectfully request that this Court vacate the judgment below and dismiss the case as to all defendants.

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APPENDIX N

MOTION OF THE DEFENDANTS-APPELLANTS FOR AN ORDER STAYING THE COURT'S MANDATE PENDING THEIR PETITION TO THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI, FILED JUNE 13, 2000

No. 97-1421
No. 98-1002

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

UNITED INTERNATIONAL HOLDINGS, INC., a Delaware corporation; and UIH ASIA INVESTMENT COMPANY, a Colorado general partnership,	)	On Appeal from the United States District Court for the District of Colorado
Plaintiffs-Appellees,	)	
v.	)	
THE WHARF (HOLDINGS) LIMITED, a Hong Kong company; WHARF COMMUNICATIONS INVESTMENTS LIMITED, a Hong Kong company; and STEPHEN NG, a Hong Kong citizen,	)	D.C. No. 94-K-2560
Defendants-Appellants.	)	

MOTION OF THE DEFENDANTS-APPELLANTS FOR AN ORDER STAYING THIS COURT'S MANDATE PENDING THEIR PETITION TO THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI

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MOTION OF THE DEFENDANTS-APPELLANTS FOR AN ORDER STAYING THIS COURT'S MANDATE PENDING THEIR PETITION TO THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI

The defendants-appellants The Wharf (Holdings) Limited, Wharf Communications Investments Limited, and Stephen Ng (hereinafter "Wharf") respectfully move pursuant to Federal Rule of Appellate Procedure 41(d)(2) for entry of an Order staying issuance of the mandate in this appeal pending Wharf's petition to the Supreme Court of the United States for a writ of certiorari.

Federal Rule of Appellate Procedure 41(d)(2) permits a Court of Appeals to stay its mandate upon a showing that "the certiorari petition would present a substantial question and that there is good cause for a stay". Fed. R. App. P. 41(d)(2)(A).

Wharf hereby certifies that it will file a petition for writ of certiorari seeking review of the adverse judgment of a panel of this Court (the "panel") and that Wharf believes there is a substantial possibility that this petition will be granted. 10th Cir. R. 41.1(B).

Wharf will raise the following issues in its petition for writ of certiorari:

1. **Did the panel err in ruling that Section 10(b) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78j(b) ("Section 10(b)") and S.E.C. Rule 10b-5 (17 C.F.R. § 240.10b-5) extends to disputes over parties' claims of right to purchase corporate securities, in conflict with the Third, Fourth, Seventh, and Ninth Circuit Courts of Appeal? *See Gurwara v. LyphoMed, Inc.*, 937 F.2d 380 (7th Cir. 1991); *Stanford v. Humphrey*, No. 88-3997, 1990 WL 4659 (9th Cir. Jan. 25, 1990) (unpub.); *Hunt v. Robinson*, 852 F.2d 786 (4th Cir. 1988); *Tully v. Mott Supermarkets, Inc.*, 540 F.2d 187 (3d Cir. 1976).**

The panel's decision in this case is inconsistent with the Supreme Court's rulings in *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975) and *Sante Fe Industries v. Green*, 430 U.S. 462 (1977) and their Circuit Court progeny.

In *Blue Chip*, the Supreme Court held that Section 10(b) does not apply to a plaintiff's claim that it would have purchased stock but for some alleged misstatements by defendant. The Court excluded from section 10(b) "those plaintiffs who were not themselves purchasers or sellers of the stock in question" because purchases/sales of stock "are generally matters which are verifiable by documentation, and do not depend upon oral recollection . . . .". 421 U.S. at 742. The Court warned that any other rule "would throw open to the trier of fact many rather hazy issues of historical fact the proof of which depended almost entirely on oral testimony". 421 U.S. at 743.

The Circuit Courts have consistently applied *Blue Chip* to require that any 10b-5 plaintiff have purchased corporate securities, or possess a right to purchase corporate securities which is enforceable under state law. *See, e.g.*, *Kagan v. Edison Bros. Stores, Inc.*, 907 F.2d 690, 691 (7th Cir. 1990) ("The principles animating [the statute of frauds] and the doctrine of *Blue Chip Stamps* alike require a conclusion that an unenforceable oral agreement is not a 'contract' to purchase or sell securities."); *Pelletier v. Stuart-James Co.*, 863 F.2d 1550, 1555-56 (11th Cir. 1989); *Southeastern Waste Treatment, Inc. v. Chem-Nuclear Sys., Inc.*, 506 F. Supp. 944, 953 (N.D. Ga. 1980) ("a person who alleges a violation of Rule 10b-5 must demonstrate that . . . he was a party to a legally enforceable contract to purchase or sell securities.").

In *Sante Fe*, the Supreme Court held that Rule 10b-5 does not govern corporate misconduct which does not involve misrepresentations of fact related to the purchase or sale of a security. The Court based its opinion on the Court's view that the federal securities laws were enacted to promote accurate disclosure of financial information related to the issuers of corporate securities, not to federalize disputes over the ownership of securities traditionally governed by state law. *See* 430 U.S. at 477-78.

The limitations on federal securities laws delineated by the Supreme Court in *Blue Chip* and *Sante Fe* have been transgressed by the panel's decision. In this case, the plaintiffs gained access to federal court by mislabelling a state law breach-of-contract claim of right to purchase securities as a Rule 10b-5 violation. The panel's decision expands the reach of Rule 10b-5 beyond misrepresentations of value relating to the financial disclosures of issuers of corporate securities. The decision federalizes state law disputes over the ownership of corporate securities.

To date, the Circuit Courts of Appeal have consistently followed the Supreme Court's teaching in *Blue Chip* and *Santa*

Fe and refused to apply Rule 10b-5 to a plaintiff's claim of right to purchase securities. In *Gurwara*, the Seventh Circuit dismissed a plaintiff's claim that defendant had misrepresented its intention to sell stock pursuant to an option because the misrepresentation "in no way related to the value of th[e] stock". 937 F.2d at 382. In *Stanford*, the Ninth Circuit affirmed the dismissal of a plaintiff's Rule 10b-5 claim because it "revolve[d] not around the purchase or sale of a security but rather around the employer's alleged failure to honor the terms of [a] . . . contract". 1990 WL 4659, at *1. In *Hunt*, the Fourth Circuit dismissed a Rule 10b-5 claim alleging that defendant had fraudulently refused to convey stock because "[p]laintiff . . . has alleged no misrepresentation of the value of the stock . . . .". 852 F.2d at 787. In *Tully*, the Third Circuit denied standing to plaintiffs whose "allegations are based, not on injuries suffered as a result of plaintiffs' actual stock purchase, but rather on injuries caused by [defendant's] refusal to sell . . . .". 540 F.2d at 194.

The Supreme Court recently reiterated its determination to construe narrowly the liability judicially implied under Rule 10b-5 in *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994) (holding that the Rule does not create aider and abettor liability), *rev'g*, *First Interstate Bank of Denver, N.A. v. Pring*, 969 F.2d 891 (10th Cir. 1992).

The panel's decision introduces significant inconsistencies into federal securities law and opens the door to 'federalizing' state law disputes related to the ownership of securities, in contravention of explicit Supreme Court precedent and consistent Circuit Court authority.

2. **Did the panel err by failing to dismiss plaintiffs' Rule 10b-5 claim because plaintiffs failed to prove a misrepresentation "in connection with the purchase or sale of [a] security", given that plaintiffs' alleged oral option was barred by the Colorado Statute of Frauds?**

***See Kagan v. Edison Bros. Stores, Inc.*, 907 F.2d 690 (7th Cir. 1990); *Pelletier v. Stuart-James Co.*, 863 F.2d 1550 (11th Cir. 1989).**

To allege "the purchase or sale of [a] security" as required in a Rule 10b-5 claim, the plaintiff must, at a minimum, allege a contract to purchase stock enforceable under state law. 15 U.S.C. § 78c(a)(14). Circuit Courts have repeatedly held that plaintiffs must have a right to purchase stock enforceable under the statute of frauds in order to state a viable cause of action under Rule 10b-5. *See, e.g., Kagan*, 907 F.2d at 691; *Pelletier*, 863 F.2d at 1555. The plaintiffs in this case did not have an enforceable contract to purchase securities because their alleged oral option is barred by the Colorado Statute of Frauds, which renders oral contracts to sell securities unenforceable. Colo. Rev. Stat. § 4-8-319.[1]

The panel in this case circumvented the Supreme Court's opinion in *Blue Chip* and converted plaintiffs' claim of breach of an unenforceable alleged oral option to purchase stock into a Rule 10b-5 action. The panel did so by claiming that the unenforceable oral option *was* a "security" under the securities laws, in conflict with the opinions of the Seventh and Eleventh Circuits in *Kagan* and *Pelletier*; by claiming that that alleged oral option *was not* a "security" under the statute of frauds, thereby repealing the applicable statute of frauds provision C.R.S. § 4-8-319, whose sole purpose was to render oral options such as that alleged by plaintiffs unenforceable; and ruling that the district court's contract "consideration" instruction obviated the need for any statute of frauds/partial performance instruction — three decisions which are clearly erroneous and which combine to transform plaintiffs'

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[1] Former section 4-8-319 of the Colorado Revised Statutes was repealed during the pendency of this action. Laws 1996, S.B. 96-132 § 2, July 1, 1996. The Colorado legislature did not make the repeal retroactive. The statute was an affirmative defense available when this action was initiated and still applies to bar plaintiff's claims.

unenforceable alleged oral option to purchase corporate stock into a Rule 10b-5 violation in violation of the rule of *Blue Chip* and in conflict with the opinions of Seventh and Eleventh Circuits in *Kagan* and *Pelletier*.

Plaintiffs' action is also barred by the economic loss rule, which bars any plaintiff who has suffered purely economic damage because of an alleged breach of contract from recovering in tort for a party's alleged misrepresentations of its intention to perform a contractual obligation. In rejecting the application of the economic loss rule to intentional misrepresentations, the panel's decision conflicts with the rulings of the Sixth, Seventh, Eighth, and Eleventh Circuits. *See Dinsmore Instrument Co. v. Bombardier, Inc.*, 199 F.3d 318, 320 (6th Cir. 1999); *AKA Distrib. Co. v. Whirlpool Corp.*, 137 F.3d 1083, 1087 (8th Cir. 1998); *Cooper Power Sys., Inc. v. Union Carbide Chems. & Plastics Co.*, 123 F.3d 675, 682 (7th Cir. 1997); *Hoseline, Inc. v. U.S.A. Diversified Prods., Inc.*, 40 F.3d 1198, 1199 (11th Cir. 1994).

The economic loss rule protects the expectations of parties in commercial relationships by precluding all tort actions in which a plaintiff sues to assert tort claims for economic loss arising from alleged misrepresentations of a party's intention to perform contractual obligations.

As an anti-fraud provision, Rule 10b-5 sounds in tort. The principles which preclude tort claims where parties' relations are governed by contract are, therefore, fully applicable to Rule 10b-5 claims. By rejecting the application of the economic loss rule to *all* intentional tort claims, in conflict with every other Circuit Court which has decided the issue, the panel eviscerated the economic loss rule. To preserve the ability of parties negotiating a contractual arrangement to control the liabilities which may arise from their negotiations, it is essential that the economic loss rule apply to bar all tort claims alleging damages for economic loss based on alleged misrepresentations of a

party's intention to perform a contract, as held by the Sixth, Seventh, Eighth and Eleventh Circuits.

3. Did the panel err in holding that the district court had subject matter jurisdiction despite the fact that Hong Kong law was applicable and plaintiffs had no claim arising under United States law?

In *Scherk v. Alberto-Culver Co.*, the Supreme Court recognized that the ability of parties to specify the law applicable to their relations is "an almost indispensable precondition to achievement of the orderliness and predictability essential to any international business transaction". 417 U.S. 506, 516 (1973). The panel's decision undermines this 'indispensable precondition'. By refusing to find Hong Kong law applicable, in contravention of the parties' legitimate expectations, the panel has drawn Wharf, a nondomiciliary corporation, into a foreign jurisdiction in order to impose obligations which could not have been reasonably anticipated, *i.e.*, a judgment for over $150,000,000 because of an alleged oral statement where plaintiffs' only real economic interests were certain expenses incurred in alleged reliance, which were valued by plaintiffs at no more than $900,000.

The facts related to the choice of law issue were not in dispute — five of the six parties are in Hong Kong (including one of the plaintiffs), virtually all the parties' discussions took place in Hong Kong, the proposed cable venture was to be located in Hong Kong, the services to be provided by the plaintiff were rendered in Hong Kong, and every document which addressed the choice of law question elected Hong Kong law. Both parties to this dispute expected their relations to be governed by Hong Kong law.

Given these uncontroverted facts, the application of Hong Kong law was dictated both by the parties' intentions and by the "most significant relationship" test articulated in *Schoenberg v. Exportadora de Sal, S.A. de C.V.*, 930 F.2d 777, 783 (9th Cir. 1991). *See also*, *Edelmann v. Chase Manhattan*

Bank, N.A., 861 F.2d 1291, 1294-95 (1st Cir. 1988); Restatement (Second) of Conflict of Laws § 148.

The panel ruled that no decision on the choice of law question was necessary because there was no demonstrated difference in the substantive securities laws of Hong Kong and the United States, 210 F.3d at 1223, despite the fact that the district court's subject matter jurisdiction was dependent on proper resolution of the choice of law question which was, therefore, plainly outcome-determinative.

The panel proceeded to ignore the evidence conclusively establishing the applicability of Hong Kong law, by creating a new requirement that all choice of law decisions must be grounded in a written, executed contract — a test which is obviously inapposite where the plaintiffs' only claim is based on an alleged oral agreement.

The panel's refusal to apply the usual choice of law rules and to recognize the district court's consequent lack of subject matter jurisdiction plainly undermines the indispensable precondition for the order and certainty in international transactions recognized by the Supreme Court in the *Alberto-Culver* case.

4. **Did the panel err in holding that a district court which lacked subject matter jurisdiction under 28 U.S.C. § 1331, because plaintiffs failed to allege a cause of action arising under the laws of the United States, could nonetheless exercise supplemental jurisdiction over related claims under state law, in conflict with the Federal and Sixth Circuit Courts of Appeal? *See Textile Prods., Inc. v. Mead Corp.*, 134 F.3d 1481, 1486 (Fed. Cir. 1998); *Musson Theatrical, Inc. v. Federal Express Corp.*, 89 F.3d 1244, 1255 (6th Cir. 1996).**

The panel proceeded to rule that the district court was empowered to exercise supplemental jurisdiction over state law claims even if the court lacked subject matter jurisdiction and

that lack of jurisdiction was obvious from the outset. In doing so, the panel applied an unacceptably subjective test requiring a demonstration of "frivolousness". 210 F.3d at 1220. The panel thereby justified the exercise of supplemental jurisdiction despite the fact that plaintiffs' claim should have been thrown out at the outset on a motion to dismiss because it failed to allege a violation of Rule 10b-5, as a matter of law.

5. **Did the panel err in affirming an excessive punitive damage award, in violation of the standards set forth in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996)?**

In *Gore*, the Supreme Court established three "guideposts" for assessing whether a punitive damage award is excessive: (1) the culpability of the defendants' conduct; (2) the sanctions for comparable conduct; and (3) the ratio of punitive to actual damages. In this case, all three of these factors militate strongly toward dismissal or, at the very least, a substantial reduction of the punitive damage award, and the panel's refusal to do so was an error. The Court noted at the outset that "the federal excessiveness inquiry . . . begins with an identification of the state interests that a punitive award is designed to serve . . . [since] punitive damages must be supported by the State's interest in protecting its own consumers and economy". 517 U.S. at 568, 572.

This case involves the largest punitive damage award ever rendered by a district court in Colorado — $58,500,000 — arising from a one-time business association involving a single project, where there were proven damages of only $900,000 in alleged reliance efforts and which had absolutely no implications for the health or safety of Colorado citizens.

In *Gore*, the Supreme Court identified three "aggravating factors" associated with conduct sufficiently reprehensible to warrant punitive damages: (1) conduct evincing indifference or reckless disregard for the health and safety of others, (2) the presence of "false statements, acts of affirmative misconduct,

or concealment of evidence of improper motive", 517 U.S. at 579, and (3) a repeated engagement in prohibited conduct. 517 U.S. at 576-79. None of these factors supports the award of any punitive damages in this case.

The loss allegedly incurred by plaintiffs was purely economic in nature. Neither Wharf's conduct nor the alleged oral option had any implications for the health or safety of others. The panel itself acknowledged that "[plaintiffs'] injury admittedly was economic in nature and thus less worthy under BMW of a punitive damages award". 210 F.3d at 1232.

In affirming the unprecedented award of punitive damages in this case the panel relied upon the statement in *Gore* that "infliction of economic injury, especially when done through affirmative acts of misconduct . . . can warrant a substantial penalty". 517 U.S. at 576. First, as described below, Wharf committed no affirmative acts of misconduct. Second, the panel ignored the very next sentence in the *Gore* opinion — "[b]ut this observation does not convert all acts that cause economic harm into torts that are sufficiently reprehensible to justify [punitive damages]". *Id.*

The panel not only failed adequately to address this important qualification; it also failed to appreciate that Colorado's economic loss rule actually precluded the conversion of plaintiffs' contract claim into a tort claim and, thereby, precluded the consequent award of punitive damages. Colorado's economic loss rule holds that "no cause of action lies in tort when purely economic damage is caused by a breach of a contractual duty". *Commercial Union Ins. Co. v. Roxborough Village Joint Venture*, 944 F. Supp. 827, 831 (D. Colo. 1996) (citing *Jardel Enters., Inc. v. Triconsultants, Inc.*, 770 P.2d 1301, 1303 (Colo. Ct. App. 1988)). Plaintiffs' claim unambiguously satisfies these criteria — they complain of: (1) "purely economic damage"; (2) arising from an alleged "breach of a contractual duty".

The panel circumvented this difficulty by holding that the economic loss rule does not apply to intentional torts. 210 F.3d at 1226. This holding is in conflict with every other federal circuit court that has addressed the question.[2] The panel thus erred in two respects — (1) in allowing a single instance involving only alleged economic damage to give rise to immense punitive damages, *contra Gore*, and (2) in allowing plaintiffs to recast their contract claim (where punitive damages are disallowed) into a tort action (where they are not), *contra* Colorado's economic loss rule.

Turning to the second indicium of reprehensible conduct, the record is bereft of any evidence of "false statements, acts of affirmative misconduct, or concealment of evidence of improper motive" on the part of Wharf. 517 U.S. at 579. Neither the panel nor the plaintiffs could point to a single instance in which Wharf confirmed, acknowledged, or even referred to the existence of the alleged oral option. As this alleged option is the sole basis for plaintiffs' claim, the absence of any reference to it logically forecloses the possibility that Wharf made any "false statements" or engaged in any "affirmative misconduct".

The most that can be said for plaintiffs' claim is that Wharf failed to promptly and clearly inform plaintiffs of its intention not to proceed with negotiations related to the cable system. But the Supreme Court noted in *Gore* that "the omission of a material fact may be less reprehensible than a deliberate false statement, particularly when there is a good-faith basis for believing that no duty to disclose exists". 517 U.S. at 580.

Nor did Wharf engage in any repeated conduct, the third 'aggravating factor' noted by the Supreme Court. The panel's unsupported assertion that "Wharf's deliberate misrepresentations and nondisclosure were not limited to a single episode but occurred repeatedly over a protracted period

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[2] *See* cases cited *supra* at p.7.

of time", 210 F.3d at 1232, is without citation and without any basis in the record. At no point did Wharf acknowledge the existence of any alleged oral option. Indeed, the panel's assertion is flatly inconsistent with the entire documentary record of the parties' negotiations, in which the plaintiffs and Wharf repeatedly and unequivocally described their relations in a manner which was inconsistent with the existence of plaintiffs' alleged oral option.

Wharf introduced multiple drafts of shareholder agreements, letters of intent, and memorandums of understanding which had been created, negotiated and repeatedly revised by both parties throughout their negotiations. The language of these documents was inconsistent with the existence of plaintiffs' alleged oral option. These documents included provisions which proved that: (1) the parties intended to proceed from a nonbinding letter of intent to a binding stock purchase agreement (which was never completed or executed); (2) all previous written or oral agreements were invalid; (3) plaintiffs would have an obligation to purchase an ownership interest in the venture, not an option; (4) plaintiffs and Wharf put all "ownership issues" "on hold" until commencement of cable operations; and (5) any investment in the venture would have to be approved by both Wharf's and plaintiffs' board of directors, which was not forthcoming. Neither the panel nor plaintiffs identified a single instance in the course of these negotiations where plaintiffs asserted the existence of their alleged oral option in the face of these repeated and plainly inconsistent actions.

In sum, plaintiffs suffered purely economic damage and there was no evidence of any act of affirmative misconduct, let alone repeated acts. There is, therefore, a total absence of any reprehensible conduct as defined by the Supreme Court in *Gore*.

The panel acknowledged that the $58,500,000 punitive damage award was "severe" as compared with the civil

penalties which could be imposed for comparable conduct - $2,500,000 under the Securities Exchange Act and $750,000 under the Colorado Securities Act. 210 F.3d at 1233. Given that the federal securities laws are inapplicable here (*See supra* issues 1, 2, and 3.), the proper comparison is to the potential penalty under Colorado law. The punitive damage award here is 78 times larger than the maximum allowable fine under Colorado law - a fact which militates strongly against the reasonableness of the punitive damage award.

The panel's decision to uphold the punitive damage award in this case relied heavily on the assertion that "[t]he $58,500,000 punitive damages award . . . was only 87% of the $67,000,000 compensatory damages award". 210 F.3d at 1232-33. The panel indicated that "[t]his factor weighs compellingly in favor of [the plaintiffs]". *Id.* In doing so, the panel ignored the fact that the only economic interest proven by plaintiffs was less than $900,000 in alleged reliance expenditures. The panel also placed exclusive reliance on the mathematical ratio between punitive and compensatory damages — a method explicitly rejected by the Supreme Court in *Gore*.

The Court's opinion noted that the Supreme Court has "consistently rejected the notion that the constitutional line is marked by a simple mathematical formula, even one that compares actual and potential damages to the punitive award". 517 U.S. at 582 (emphasis removed). *Gore* confirmed that "the proper inquiry is whether there is a reasonable relationship between the punitive damages award and the harm likely to result from the defendant's conduct as well as the harm that actually has occurred". 517 U.S. at 581 (emphasis removed) (internal quotation marks omitted). The panel, relying exclusively on its 'ratio test', failed even to attempt such an inquiry.

Plaintiffs' only proven damages were the alleged value of certain efforts undertaken in alleged reliance upon Wharf's

alleged oral option agreement. These alleged efforts were valued at less than $900,000 by plaintiffs. Plaintiffs failed to provide any evidence of damages in excess of this figure. The only evidence of loss introduced, apart from plaintiffs' $900,000 reliance claim, was an expert opinion which valued a 10% interest in Wharf cable, not an option to purchase such an interest for ± $50,000,000. Plaintiffs misrepresented that expert opinion as a valuation of the option. The panel affirmed despite this misrepresentation without offering any rationally acceptable justification for its conclusion. This case, therefore, involves punitive damages of $58,500,000 in a case where the *only* acceptable evidence of economic loss was less than $900,000, a ratio of 65 to 1. By contrast, the ratio of the punitive damages to in-state economic loss caused by the defendant in *Gore* was only 35 to 1. 517 U.S. at 582 n.35.

To find a "reasonable relationship" between plaintiffs' $900,000 loss, the $58,500,000 punitive damages award, the alleged conduct of Wharf, and the state interests at issue here would "empty the 'reasonable relationship' test of meaningful content". 517 U.S. at 590 (Breyer, J., concurring). The punitive damage award in this case is, therefore, manifestly unreasonable.

In sum, none of the three considerations articulated by the Supreme Court in *Gore* could conceivably support the punitive damage award in this case. None of the three indicia of reprehensibility are present, the award dwarfs the potential civil penalties for comparable conduct, and there is no reasonable relationship between the award and the actual harm and/or the legitimate state interests in deterrence.

The fact is that the evidence at best indicates that Wharf did not promptly advise plaintiffs of its intention not to proceed with the transaction under negotiation. To impose punitive damages of $58,500,000 in a case where plaintiffs' reliance damages do not exceed $900,000, on the basis of a single

alleged oral utterance, is irreconcilable with the principles of *Gore*.

Good cause exists for entering the stay that Wharf seeks. Given the sheer enormity of the verdict — $150,000,000 (at the time the largest in Colorado district court history) — and the fact that every one of the complex issues described in this motion was resolved, without exception, and largely without justification, against Wharf, considerations of fundamental fairness support the issuance of a stay pending Wharf's application for review by the Supreme Court.

Wherefore, for all of the foregoing reasons, Wharf respectfully requests that its motion for a stay of this Court's mandate be granted.

Respectfully submitted:

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APPENDIX O

DRAFT LETTER OF INTENT, DATED AUGUST, 1992 (ADD. 43-47; UIH004289-93)

THIS LETTER OF INTENT is made on August, 1992

BETWEEN

(1) WHARF COMMUNICATIONS INVESTMENTS LIMITED ("Wharf");

(2) UNITED INTERNATIONAL HOLDINGS, INC ("UIH"); and

(3) NYNEX NETWORK SYSTEMS COMPANY ("NYNEX")

and records the intention of the parties to cooperate together and invest in a company to be known as Wharf Cable Limited ("Wharf Cable"), for the purpose of carrying on the businesses outlined in paragraph 2 below. This letter does not create legally binding and enforceable obligations and is intended to identify in general terms a number of the principal matters forming the basis of the cooperation between the parties. The parties agree that it is their intention that, subject to each of them obtaining all requisite consents and authorities including, where necessary, approvals of shareholders and their boards of directors to the proposed investment and the other matters provided for in this letter and in the proposed shareholders' agreement referred to in paragraph 11 below (the "Shareholders' Agreement"):-

1. Corporate Structure and Shareholdings

Wharf Cable will be incorporated under the laws of Hong Kong and its issued share capital will be held as to 70% by Wharf, 20% by NYNEX and 10% by UIH. If, by the time of the proposed signing of the Shareholders' Agreement, the necessary approvals to NYNEX acquiring its 20% interest have not been obtained, Wharf will acquire an initial interest of 90% on the basis that it will make 20% available to NYNEX when such approvals have been obtained.

2. Corporate Purpose

Wharf Cable will conduct feasibility studies and attend to all other necessary matters in preparing and submitting to the Government of Hong Kong an application for a licence to provide a subscription television service in Hong Kong. If the application is successful and the licence (the "Pay TV Licence") is awarded and accepted by Wharf Cable, Wharf Cable will proceed to construct, operate and manage a subscription cable television network that includes the production and commissioning of television programming pursuant to the Pay TV Licence requirements.

Wharf Cable may also engage, if the terms of the Pay TV Licence permit, in ancillary communications-related businesses not covered by the Pay TV Licence. Such operations may include programme licensing overseas, decoder leasing and maintenance, and alternate residential and commercial applications for its cable network (eg. security monitoring).

In addition, Wharf Cable will submit an application for a fixed telecommunications network licence in accordance with paragraph 6 below once the relevant Hong Kong Governmental guidelines have been determined.

3. Corporate Governance

As the 70% (and possibly 90%) majority shareholder, Wharf will be the controlling shareholder of Wharf Cable and will be entitled to appoint the chairman and executive officers of Wharf Cable.

Every shareholder will be entitled to appoint and remove one director for every 10% of the issued share capital of Wharf Cable (up to and including 50%) of which it is the holder. In addition the shareholder who holds more than 50 per cent of the issued share capital of Wharf Cable shall have the further right, in case where the number of

directors to be appointed by such shareholder is not in the majority, to appoint such number of additional directors as will result in the directors appointed by such shareholder exceeding by one the number of directors which the other shareholders are, in aggregate, entitled to appoint. For the purpose of this paragraph, shareholdings held by group companies in Wharf Cable shall be aggregated and deemed to be held by one shareholder only.

Resolutions of the board of directors (the "Board") will normally be decided by a majority of votes although a number of reserve matters will require a super majority approval, being the approval of all directors appointed by Wharf and one director appointed by one of the other parties.

4. Capitalization

The parties will subscribe for shares and make loans to Wharf Cable pro-rata to their ownership interests in accordance with upper limits as outlined in a capital contribution schedule which will be attached to the Shareholders' Agreement. This capital contribution schedule shall conform to a Downside Case of the Business Plan for the subscription television project (the "Pay TV Business Plan") and, once finalised, cannot later be amended without the consent of a supermajority of the Board. In the event that consent is not granted and additional funding is required, any shareholders whose nominated Directors approved the proposed amendment to the Downside Case of the Pay TV Business Plan will be entitled to contribute additional capital by either: (i) subscribing for additional Wharf Cable shares at a fair price per share pro-rata to their shareholding interests or in such other proportions as may be agreed between the funding shareholders; or (ii) providing loans in such proportions to Wharf Cable on market terms.

The Pay TV Business Plan will encompass the subscription of both debt and equity, including the provision of financial guarantees by the shareholders of Wharf Cable of a several nature, inclusive of the period between bid preparation and the date of acceptance by Wharf Cable of the Licence. It is not contemplated that any third-party debt financing be obtained prior to such date.

5. Acceptance of the Pay TV Licence

If the Pay TV Licence is granted to Wharf Cable on terms which are considered by the Board to be not materially different from the terms of Wharf Cable's application, then all parties shall procure Wharf Cable to accept the Pay TV Licence.

In the event that the terms of the Pay TV Licence are determined by the Board to be materially different from the terms of the application, a supermajority approval of the Board must be obtained prior to acceptance of the Pay TV Licence. Upon acceptance, disapproving shareholders shall be required to sell their shares and financing commitments at cost and the approving shareholders will be required to purchase/assume the shares and financial commitments on a pro-rata basis. If only Wharf-nominated directors are in favour of accepting the Pay TV Licence and a supermajority approval of the Board cannot be achieved, then Wharf shall have the option either to:- (i) purchase/assume the shares and financial commitments of all the other shareholders at cost or (ii) to wind up Wharf Cable by serving notice requiring all other shareholders to exercise their voting rights and to take all necessary steps to wind up Wharf Cable. Otherwise, if no directors are in favor of accepting the Pay TV Licence, any shareholder can serve notice to effect the winding up of Wharf Cable.

6. Fixed Telecom Network

Upon the approval of the Board to organise the submission of an application for a fixed telecom network licence (the "Telecom Licence"), Wharf Cable or a separate Wharf Cable subsidiary over which Wharf Cable will maintain majority ownership (more than 50%) and control ("Wharf Tel") shall bid for and, upon acceptance of the Telecom Licence, construct, manage and operate the telecom franchise. Adoption of the Telecom Licence by Wharf Cable or Wharf Tel, as the case may be, shall be subject to Board approval of Wharf Cable.

In connection with the fixed telecom network, the shareholders of Wharf Cable shall be obligated to capitalise Wharf Cable/Wharf Tel by subscribing for additional shares of Wharf Cable in amounts proportionate to their interests in Wharf Cable. Furthermore, the shareholders of Wharf Cable shall be obligated to provide their pro-rata share of any debt financing and/or financial guarantees as is then deemed appropriate under the Business Plan adopted for the fixed telecom network.

In the event Wharf Cable directly, or indirectly through its subsidiary, is barred by law from submitting an application for the Telecom Licence the shareholders of Wharf Cable will procure that there is established and capitalised a corporation distinct from Wharf Cable which submits a separate application with the intention of owning and operating the telecom franchise. This separate corporation shall, in all respects, mirror the ownership structure and governing principles of Wharf Cable, save for any exceptions as required by law.

7. Default in Funding Obligations

In the event a Wharf Cable shareholder ("non-funding shareholder") defaults in subscribing for additional shares of Wharf Cable and/or providing debt financing and/or

financial guarantees as provided in paragraphs 4 and 6 above, the other Wharf Cable shareholders ("funding shareholders") may (without prejudice to any other rights or remedies) assume the non-funding shareholder's obligations pro-rata to their shareholding interests or in such other proportions as may be agreed amongst the funding shareholders.

8. Transfer of Shares

Except as stipulated under paragraph 5 above, no shareholder may transfer or sell its shares and financial obligations until after the commercial launch date for subscription television (except for transfers between a shareholder and its affiliates). Thereafter, any shareholder may sell or transfer no less than 25% of its committed shares and financial obligations to any party provided that the selling shareholder grants pre-emptive right to all existing shareholders, on a pro-rata basis, to purchase its shares at a price equivalent to the consideration offered under a binding letter of intent with the third party.

Notwithstanding the preceding, both (i) the transfer between a shareholder and its affiliate or (ii) the admittance of any new shareholder shall be subject to the majority approval of the Board.

9. Shareholder Provision of Services

The provision of services to Wharf Cable by any shareholder or its affiliates shall be undertaken on an arms-length basis, and subject to full disclosure to the Board. Where the annualised value of such services exceeds $[ ], a supermajority approval of the Board shall be required. In the event that Board approval is not obtained, the Board may either choose to consider another party for the provision of such services or request the submission of bids via public tender. It is intended that NYNEX will enter into a technical assistance agreement with Wharf

Cable (on terms to be mutually agreed) at the closing of the Shareholders' Agreement.

10. New Ventures

If Wharf Cable proposes to purchase or invest in any business or venture, the business purpose of which is deemed by a supermajority vote of the Board to differ materially from the business purpose of Wharf Cable, approval of such purchase or investment will require the supermajority consent of the Board.

11. Non-Competition Undertaking

Each of the parties undertakes that neither it nor any of its affiliates, independently or in conjunction with others, shall promote, support or participate (directly or indirectly) in any manner whatsoever in any bid or tender or expression of interest for the Pay TV Licence or the Telecom Licence (or in their implementation) in competition with the bid and tender prepared and submitted by Wharf Cable or, as the case may be, Wharf Tel (or in their implementation).

12. Shareholders' Agreement

Each of the parties will negotiate in good faith, and use all reasonable endeavors to conclude the terms of a formal, legally binding shareholders' agreement between them by not later than Friday, 25th September, 1992 so as to enable the application for the Pay TV Licence to be made to the Government of Hong Kong by the deadline of Wednesday, 30th September, 1992.

SIGNED by:-

for and on behalf of WHARF COMMUNICATIONS INVESTMENTS LIMITED	for and on behalf of UNITED INTERNATIONAL HOLDINGS, INC.	for and on behalf of NYNEX NETWORK SYSTEMS COMPANY

APPENDIX P

DRAFT LETTER OF INTENT, DATED SEPTEMBER 10, 1992 (ADD. 58-63; UIH005407-12)

[Draft 3 10/9/92]

THIS LETTER OF INTENT is made on September, 1992

BETWEEN

(1) WHARF COMMUNICATIONS INVESTMENTS LIMITED ("Wharf");

(2) UNITED INTERNATIONAL HOLDINGS, ASIA ("UIH"); and

(3) NYNEX NETWORK SYSTEMS COMPANY ("NYNEX")

and records the intention of the parties to cooperate together and invest in a company to be known as Cable Network Communications Limited ("CNCL"), for the purpose of carrying on the businesses outlined in paragraph 2 below. This letter does not create legally binding and enforceable obligations and is intended to identify in general terms a number of the principal matters forming the basis of the cooperation between the parties. The parties agree that it is their intention that, subject to each of them obtaining all requisite consents and authorities including, where necessary, approvals of shareholders and their boards of directors to the proposed investment and the other matters provided for in this letter and in the proposed shareholders' agreement referred to in paragraph 11 below (the "Shareholders' Agreement") :-

1. Corporate Structure and Shareholdings

CNCL will be incorporated under the laws of Hong Kong and its issued share capital will be held as to up to 70% by Wharf, 20% by NYNEX and 10% by UTH. If, by the time of the proposed signing of the Shareholders' Agreement, the necessary approvals to NYNEX acquiring its 20% interest have not been obtained, Wharf will acquire an initial interest of 90% on the basis that it will make 20% available to NYNEX when such approvals have been obtained.

In addition, Wharf shall be entitled, subject to the unanimous consent of all the parties at any time within [12] months of the signing of the Shareholders' Agreement referred to in paragraph 12 below to make available up to 5% of the issued share capital to a party whose association with CNCL it reasonably believes can enhance and promote the business of CNCL whether by reason of such party's business or financial expertise, geographical area of operation or otherwise.

2. Corporate Purpose

CNCL will conduct feasibility studies and attend to all other necessary matters in preparing and submitting to the Government of Hong Kong an application for a license to provide a subscription television service in Hong Kong. If the application is successful and the license (the "Pay TV License") is awarded and accepted by CNCL, CNCL will proceed to construct, operate and manage a subscription cable television network that includes the production commissioning and acquisition of television programming pursuant to the Pay TV License requirements.

CNCL may also engage, if the terms of the Pay TV License permit, in ancillary communications-related businesses not covered by the Pay TV License. Such operations may include programme licensing overseas, decoder leasing and maintenance, and alternate residential and commercial applications for its cable network (eg. security monitoring).

In addition, CNCL will submit an application for a fixed telecommunications network license in accordance with paragraph 6 below once the relevant Hong Kong Government guidelines have been determined.

3. Corporate Governance

As the 70% (and possibly 90%) majority shareholder, Wharf will be the controlling shareholder of CNCL and will be entitled to appoint and remove the chairman and those executive officers and consultants of CNCL whose compensation packages exceed [ ] per annum.

Every shareholder will be entitled to appoint and remove one director for every 10% of the issued share capital of CNCL (up to and including 50%) of which it is the holder. In addition the shareholder who holds more than 50 per cent of the issued share capital of CNCL shall have the further right, in case where the number of directors to be appointed by such shareholder is not the majority, to appoint such number of additional directors as will result in the directors appointed by such shareholder exceeding by one the number of directors which the other shareholders are, in aggregate, entitled to appoint. For the purpose of this paragraph, shareholdings held by group companies in CNCL shall be aggregated and deemed to be held by one shareholder only.

Resolutions of the board of directors (the "Board") will normally be decided by a majority of votes although a number of reserve matters will require a super majority approval, being the approval of all directors appointed by Wharf and one director appointed by one of the other parties. A valid quorum of the board of directors shall be 3 directors, one from each of the parties. Alternate directors may be appointed by any director. Meetings of the board shall be held every 2 weeks.

a) For the avoidance of doubt the following matters will require, as a matter of Hong Kong law, the passing of a special resolution of the shareholders in general meeting:-

[list to be supplied]

b) A Human Resources Committee shall be established as a separate committee of the Board consisting of one representative appointed by each of the parties, which will assist and advise the chief executive officer in the interviewing and appointment of persons to senior executive positions and consultants where the remuneration of such consultant exceeds the value of [$].

4. Capitalisation

The parties will subscribe for shares and make loans to CNCL pro-rata to their ownership interests in accordance with upper limits as outlined in a capital contribution schedule which will be attached to the Shareholders' Agreement. This capital contribution schedule shall conform to a Downside Case of the Business Plan for the subscription television project (the "Pay TV Business Plan") and, once finalised, cannot later be amended without the consent of a supermajority of the Board. In the event that consent is not granted and additional funding is required, any shareholders whose nominated Directors approved the proposed amendment to the Downside Case of the Pay TV Business Plan will be entitled to contribute additional capital by either: (i) subscribing for additional CNCL shares at a fair price per share pro-rata to their shareholding interests or in such other proportions as may be agreed between the funding shareholders; or (ii) providing loans in such proportions to CNCL on market terms.

If the Pay TV Licence is awarded to CNCL and accepted, each of the parties shall submit their account of expenses. The sums spent prior to the award of the Pay TV Licence by each shareholder shall be treated as shareholder loans and credited to that the shareholder's account as an equity contribution by that share holder. In the event that the Pay TV Licence is not awarded to CNCL, each party will bear

the cost of their own expenses to date. Any third party expenditure for CNCL's account prior to award to the Pay TV Licence shall be agreed between the parties prior to such expenditure. All existing third party expenditure will be borne by Wharf. All existing expenses incurred by Wharf in connection with preparation for the application for the Pay TV Licence including the provision of services on a temporary or permanent basis of any non shareholder employees shall be borne by Wharf.

The Pay TV Business Plan will encompass the subscription of both debt and equity, including the provision of financial guarantees by the shareholders of CNCL of a several nature, inclusive of the period between bid preparation and the date of acceptance by Wharf cable of the License. It is not contemplated that any third-party debt financing be obtained prior to such date.

5. Acceptance of the Pay TV License

If the Pay TV License is granted to CNCL on terms which are considered by the Board to be not materially different from the terms of CNCL's application, then all parties shall procure CNCL to accept the Pay TV License.

In the event that the terms of the Pay TV License are determined by the Board to be materially different from the terms of the application, a supermajority approval of the Board must be obtained prior to acceptance of the Pay TV License. Upon acceptance, disapproving shareholders shall be required to sell their shares and financing commitments at cost and the approving shareholders will be required to purchase/assume the shares and financial commitments on a pro-rata basis. If only Wharf-nominated directors are in favour of accepting the Pay TV License and a supermajority approval of the Board cannot be achieved, then Wharf shall have the option either to :- (i) purchase/assume the shares and financial commitments of all the other shareholders at cost of (ii) to wind up

CNCL by serving notice requiring all other shareholders to exercise their voting rights and to take all necessary steps to wind up CNCL. Otherwise, if no directors are in favour of accepting the Pay TV License, any shareholder can serve notice to effect the winding up of CNCL.

6. Fixed Telecom Network

Upon the approval of the Board to organise the submission of an application for a fixed telecom network license (the "Telecom License"), CNCL or a separate CNCL subsidiary over which CNCL will maintain majority ownership (more than 50%) and control ("Wharf Tel") shall bid for and, upon acceptance of the Telecom License, construct, manage and operate the telecom franchise. Adoption of the Telecom License by CNCL or Wharf Tel, as the case may be, shall be subject to Board approval of CNCL. The introduction of a new party as a shareholder in Wharf Tel will require the super majority approval of the Board.

In connection with the fixed telecom network, the shareholders of CNCL shall be obligated to capitalise CNCL/Wharf Tel by subscribing for additional shares of CNCL in amounts proportionate of CNCL shall be obligated to provide their pro-rata share of any debt financing and/or financial guarantees as is then deemed appropriate under the Business Plan adopted for the fixed telecom network.

In the event of Wharf cable directly, or indirectly through its subsidiary, is barred by law from submitting an application for the Telecom License the shareholders of CNCL will procure that there is established and capitalised a corporation distinct from CNCL which submits a separate application with the intention of owning and operating the telecom franchise. This structure and governing principles of CNCL, save for any exceptions as required by law.

7. Default in Funding Obligations

In the event a CNCL shareholder ("non-funding shareholder") defaults in subscribing for additional shares of CNCL and/or providing debt financing and/or financial guarantees as provided in paragraphs 4 and 6 above, the other CNCL shareholders ("funding shareholders") may (without prejudice to any other rights or remedies) assume the non-funding shareholders obligations pro-rata to their shareholding interests or in such other proportions as may be agreed amongst the funding shareholders.

8. Transfer of Shares

Except as stipulated under paragraphs 1 and 5 above, no shareholder may transfer or sell its shares and financial obligations until after the commercial launch date for subscription television (except for transfers between a shareholder and its affiliates). Thereafter, any shareholder may sell or transfer no less than 25% of its committed shares and financial obligations to any party provided that the selling shareholder grants pre-emptive right to all existing shareholders, on a pro-rata basis, to purchase its shares at a price equivalent to the consideration offered under a binding letter of intent with the third party.

Notwithstanding the preceding the admittance of any new shareholder which, or the affiliates of which, have interests in any telecommunications or television businesses in Hong Kong or other countries in South East Asia shall be subject to the majority approval of the Board.

9. Shareholder Provision of Services

The provision of services to CNCL by any shareholder or its affiliates shall be undertaken on an arms-length basis, and subject to full disclosure to the Board. Where the annualised value of such services exceeds $[ ], a supermajority approval of the Board shall be required. In the event that Board approval is not obtained, the Board

may either choose to consider another party for the provision of such services or request the submission of bids via public tender. If at the request of CNCL the provision of services any employee of any shareholder is made available to CNCL the expenses will be paid by CNCL. In the event that the provision of the employee's services exceeds two weeks in any continuous period, both the salary and expenses of that employee will be paid by CNCL.

10. New Ventures

If CNCL proposes to purchase or invest in any business or venture, the business purpose of which is deemed by a supermajority vote of the Board to differ materially from the business purpose of CNCL, approval of such purchase or investment including the maximum funding liability of the shareholders in relation thereto will require the supermajority consent of the Board.

11. Non-Competition Undertaking

Each of the parties undertakes that neither it nor any of its affiliates, independently or in conjunction with others, shall promote, support or participate (directly or indirectly) in any manner whatsoever in any bid or tender or expression of interest for the Pay TV License of the Telecom License (or in their implementation) in competition with the bid and tender prepared and submitted by CNCL, or as the case may be, Wharf Tel (or in their implementation).

12. Shareholders' Agreement

Each of the parties will negotiate in good faith, and use all reasonable endeavors to conclude the terms of a formal, legally binding shareholders' agreement between them by not later than Friday, 25th September, 1992 so as to enable the application for the Pay TV License to be made to the

Government of Hong Kong by the deadline of Wednesday, 30th September, 1992.

SIGNED by :-

for and on behalf of WHARF COMMUNICATIONS INVESTMENTS LIMITED	for and on behalf of UNITED INTERNATIONAL HOLDINGS, INC.	for and on behalf of NYNEX NETWORK SYSTEMS COMPANY

APPENDIX Q

EXCERPT FROM DRAFT SHAREHOLDERS' AGREEMENT CONTAINING HONG KONG CHOICE OF LAW PROVISION (ADD. 65, 118-119; AGREEMENT ANNEXED TO ADD. 64; P.APP. AM)

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[...]

25. GOVERNING LAW

25.01 This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of the Hong Kong courts.

25.02 UIH unconditionally appoints any partner of [ ] as its agent to receive and acknowledge on its behalf service of any writ, summons, order, judgment or other notice of legal process in Hong Kong relating to any matter arising out of or in connection with this Agreement. If for any reason the agent named above (or its successor) no longer serves as agent of UIH for this purpose, UIH shall promptly appoint a successor agent in Hong Kong and forthwith notify the other parties.

IN WITNESS whereof this Agreement has been executed on the day and year first above written.

SIGNED by)
for an on behalf of)
WHARF COMMUNICATIONS)
INVESTMENTS LIMITED in the)
presence of:-)

SIGNED by)
for and on behalf of)
UNITED INTERNATIONAL HOLDINGS,)
INC in the presence of:-)

SIGNED by)
for and on behalf of)
WHARF CABLE LIMITED)
in the presence of:-)

APPENDIX R

EXCERPT FROM TECHNICAL COOPERATION AGREEMENT, DATED SEPTEMBER 25, 1992 (ADD. 163-64, 174; UIH002668-69, 2679)

R-1

Dated 25 September 1992

(1) WHARF CABLE LIMITED

(2) NYNEX NETWORK SYSTEMS COMPANY

TECHNICAL COOPERATION AGREEMENT

Herbert Smith
17th Floor
Edinburgh Tower
15 Queen's Road Central
Hong Kong

THIS AGREEMENT is made on September, 1992

BETWEEN

(1) WHARF CABLE LIMITED, a company incorporated in Hong Kong with registration number 354909 and whose registered office is at 16th Floor, Ocean Centre, Harbour City, Canton Road, Kowloon, Hong Kong ("the Company"); and

(2) NYNEX NETWORK SYSTEMS COMPANY a Delaware corporation the principal executive office of which is at 4 West Red Oak Lane, White Plains, New York, United States of America ("NYNEX")

WHEREAS

(A) NYNEX and its subsidiaries possess valuable technical information and business expertise in the cable television industry, particularly in relation to the design, installation and maintenance of subscription television networks.

(B) The Company proposes to make an application to the Government of Hong Kong for the grant of a licence to operate a subscription television network and in connection therewith the Company wishes to obtain the benefit of NYNEX's experience, and to engage NYNEX for the purpose of receiving assistance with respect to the administrative and technical operations of the subscription television system on the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:-

1. Definitions and interpretations

[...]

15. Governing Law

15.1 This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of the Hong Kong courts.

15.2 NYNEX unconditionally appoints any partner of Baker & McKenzie (Hong Kong) as its agent to receive and acknowledge on its behalf service of any writ, summons, order, judgment or other notice of legal process in Hong Kong relating to any matter arising out of or in connection with this Agreement. If for any reason the agent named above (or its successor) no longer serves as agent of NYNEX for this purpose, NYNEX shall promptly appoint a successor agent in Hong Kong and forthwith notify the other parties.

APPENDIX S

EXCERPT FROM DRAFT SHAREHOLDERS' AGREEMENT CONTAINING HONG KONG CHOICE OF LAW PROVISION, DATED OCTOBER 26, 1992 (ADD. 205-06, 255-57; WC06529-30, 6579-81)

S-1

DATED [ ] JANUARY 1993

WHARF COMMUNICATIONS INVESTMENTS LIMITED

UNITED INTERNATIONAL HOLDINGS, INC

NYNEX NETWORK SYTEMS COMPANY

and

CABLE NETWORK COMMUNICATIONS LIMITED

SHAREHOLDERS' AGREEEMENT

Herbert Smith
17th Floor
Edinburgh Tower
15 Queen's Road Central
Hong Kong

Draft: 26.10.92

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[. . .]

23. GOVERNING LAW

23.01 This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of the Hong Kong courts.

23.02 UIH unconditionally appoints any partner of [ ] as its agent to receive and acknowledge on its behalf services of any writ, summons, order, judgment or other notice of legal process in Hong Kong relating to any matter arising out of or in connection with this Agreement. If for any reason the agent named above (or its successor) no longer serves as agent of UIH for this purpose. UIH shall promptly appoint a successor agent in Hong Kong and forthwith notify the other parties.

23.03 NYNEX unconditionally appoints any partner of [ ] as its agent to receive and acknowledge on its behalf service of any writ, summons, order, judgment or other notice of legal process in Hong Kong relating to any matter arising out of or in connection with this Agreement. If for any reason the agent named above (or its successor) no longer serves as agent of NYNEX for this purpose, NYNEX shall promptly appoint a successor agent in Hong Kong and forthwith notify the other parties.

IN WITNESS whereof this Agreement has been executed on the day and year first above written.

SIGNED by)
for an on behalf of)
WHARF COMMUNICATIONS INVESTMENTS)
LIMITED in the presence of:-)

SIGNED by)
for an on behalf of)
UNITED INTERNATIONAL HOLDINGS,)
INC in the presence of:-)

SIGNED by)
for an on behalf of)
NYNEX NETWORK SYSTEMS COMPANY)
in the presence of:-)

SIGNED by)
for an on behalf of)
CABLE NETWORK COMMUNICATIONS)
LIMITED in the presence of:-)
)

APPENDIX T

EXCERPT FROM DRAFT SHAREHOLDERS' AGREEMENT CONTAINING HONG KONG CHOICE OF LAW PROVISION, DATED NOVEMBER 4, 1992 (ADD. 258-59, 309-10; WC06597-98, 6648-49)

DATED [ ] JANUARY 1993

WHARF COMMUNICATIONS INVESTMENTS LIMITED

UNITED INTERNATIONAL HOLDINGS, INC

NYNEX NETWORK SYTEMS COMPANY

and

CABLE NETWORK COMMUNICATIONS LIMITED

SHAREHOLDERS' AGREEEMENT

Herbert Smith
17th Floor
Edinburgh Tower
15 Queen's Road Central
Hong Kong

Draft: 4.11.92

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[. . .]

23. GOVERNING LAW

23.01 This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of the Hong Kong courts.

23.02 UIH unconditionally appoints any partner of [ ] as its agent to receive and acknowledge on its behalf service of any writ, summons, order, judgment or other notice of legal process in Kong Kong relating to any matter arising out of or in connection with this Agreement. If for any reason the agent named above (or its successor) no longer serves as agent of UIH for this purpose. UIH shall promptly appoint a successor agent in Hong Kong and forthwith notify the other parties.

23.03 NYNEX unconditionally appoints any partner of [ ] as its agent to receive and acknowledge on its behalf service of any writ, summons, order, judgment or other notice of legal process in Hong Kong relating to any matter arising out of or in connection with this Agreement. If for any reason the agent named above (or its successor) no longer serves as agent of NYNEX for this purpose, NYNEX shall promptly appoint a successor agent in Hong Kong and forthwith notify the other parties.

IN WITNESS whereof this Agreement has been executed on the day and year first above written.

SIGNED by)
for an on behalf of)
WHARF COMMUNICATIONS INVESTMENTS)
LIMITED in the)
presence of:-)

SIGNED by)
for an on behalf of)
UNITED INTERNATIONAL HOLDINGS,)
INC in the presence of:-)

SIGNED by)
for an on behalf of)
NYNEX NETWORK SYSTEMS COMPANY)
in the presence of:-)

SIGNED by)
for an on behalf of)
CABLE NETWORK COMMUNICATIONS)
LIMITED)
in the presence of:-)

APPENDIX U

EXCERPT FROM DRAFT SHAREHOLDERS' AGREEMENT CONTAINING HONG KONG CHOICE OF LAW PROVISION, DATED NOVEMBER 19, 1992 (ADD. 340-41, 391-92; WC02106-07, 157-158)

DATED [ ] JANUARY 1993

WHARF COMMUNICATIONS INVESTMENTS LIMITED

UNITED INTERNATIONAL HOLDINGS, INC

NYNEX NETWORK SYTEMS COMPANY

and

CABLE NETWORK COMMUNICATIONS LIMITED

SHAREHOLDERS' AGREEEMENT

Herbert Smith
17th Floor
Edinburgh Tower
15 Queen's Road Central
Hong Kong

Draft: 19.11.92

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[. . .]

23. GOVERNING LAW

23.01 This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of the Hong Kong courts.

23.02 UIH unconditionally appoints any partner of [ ] as its agent to receive and acknowledge on its behalf service of any writ, summons, order, judgment or other notice of legal process in Hong Kong relating to any matter arising out of or in connection with this Agreement. If for any reason the agent named above (or its successor) no longer serves as agent of UIH for this purpose, UIH shall promptly appoint a successor agent in Hong Kong and forthwith notify the other parties.

23.03 NYNEX unconditionally appoints any partner of [ ] as its agent to receive and acknowledge on its behalf service of any writ, summons, order, judgment or other notice of legal process in Hong Kong relating to any matter arising out of or in connection with this Agreement. If for any reason the agent named above (or its successor) no longer serves as agent of NYNEX for this purpose, NYNEX shall promptly appoint a successor agent in Hong Kong and forthwith notify the other parties.

IN WITNESS whereof this Agreement has been executed on the day and year first above written.

SIGNED by)
for and on behalf of)
WHARF COMMUNICATIONS INVESTMENTS)
LIMITED in the presence of:-)

SIGNED by)
for and on behalf of)
UNITED INTERNATIONAL HOLDINGS,)
INC in the presence of:-)

SIGNED by)
for and on behalf of)
NYNEX NETWORK SYSTEMS COMPANY)
in the presence of:-)

SIGNED by)
for and on behalf of)
CABLE NETWORK COMMUNICATIONS)
LIMITED)
in the presence of:-)

APPENDIX V

DRAFT MEMORANDUM OF UNDERSTANDING, DATED APRIL 30, 1993 (ADD. 400-06; WC00177-83)

[DRAFT 4/30/93]

THIS MEMORANDUM OF UNDERSTANDING ("Agreement") is made as of the __ day of May, 1993,

BETWEEN

(1) WHARF COMMUNICATIONS INVESTMENTS LIMITED ("Wharf"); and

(2) UNITED INTERNATIONAL HOLDINGS, INC. ("UIH")

and records the principle terms and conditions pursuant to which the parties will cooperate together and invest in a company known as Cable Network Communications Limited ("CNCL") for the purpose of carrying on the businesses outlined in Paragraph 1 below.

1. Corporate Structure and Purposes

(a) CNCL has been incorporated under the laws of Hong Kong and its issued share capital is currently held 100% by Wharf.

(b) CNCL, through its wholly-owned subsidiary, Wharf Cable Limited, has been awarded a license to provide a subscription television service in Hong Kong (the "Pay TV License"). Wharf Cable will construct, operate and manage a subscription cable television network that includes the production, commissioning and acquisition of television programming pursuant to the Pay TV License requirements.

(c) Wharf Cable may also engage in ancillary communications-related businesses not covered by the Pay TV License. Such operations may include program licensing overseas, and alternate residential and commercial applications for its cable network (e.g. security monitoring).

(d) In addition, CNCL has formed another subsidiary, Wharf Telecommunications Limited, which has submitted an application for a fixed telecommunications network license in Hong Kong.

2. Acquisition of Shares

(a) Wharf and UIH will use best efforts to agree on a Business Plan for the subscription television project no later than June 30, 1993 (the "Pay TV Business Plan"). The Pay TV Business Plan will specify the maximum amount of equity capitalization and the amount to be debt financed.

(b) Within a period of 180 days from the date of approval by UIH and Wharf of the Pay TV Business Plan ("Acquisition Period") and subject to the conditions below, UIH shall acquire up to 20% of the shares of CNCL from Wharf. Prior to the end of the Acquisition Period, UIH shall notify Wharf in writing of its intent to acquire the shares and the acquisition of the shares shall occur no later than ten (10) business days after receipt of the notice ("Acquisition Date").

(c) On the Acquisition Date, UIH will make an initial capital contribution to CNCL in an amount which will result in UIH having made a percentage of the total capital contributions made to CNCL as of the Acquisition Date which is equal to UIH's percentage ownership interest in CNCL (including UIH's initial capital contribution in the calculation of total capital contributions). In addition, on the Acquisition Date UIH will demonstrate to Wharf's reasonable satisfaction that UIH has obtained financial commitments of an amount equal to its pro-rata share of the capital contribution requirements under the Pay TV Business Plan for the first eighteen (18) months from the date of the award of the Pay TV License, less

the amount paid to CNCL by UIH as its initial capital contribution.

(d) Prior to the Acquisition Date, Wharf may select a third party to purchase an ownership interest which party must be approved by UIH and must agree to the terms of this Agreement and/or the Shareholder's Agreement (whichever is in effect at the time). Wharf's ownership interest will not be less than 60%.

(e) The acquisition of the shares of CNCL by UIH is conditioned upon:

approval by both UIH and Wharf of the following:

(i) the Pay TV Business Plan;

(ii) the terms of the Pay TV License;

(iii) the terms of the Shareholders' Agreement (as defined herein); and

(iv) in the event the Telecom License is issued to Wharf, the terms of the Telecom License and Wharf Tel Business Plan (as defined herein);

and demonstration by UIH of financial commitments as described above to Wharf's reasonable satisfaction.

3. Corporate Governance

The board of directors of CNCL (the "Board") will be entitled to appoint and remove the chairman and those executive officers and consultants of CNCL whose compensation packages on an annualized basis exceed HK$1,000,000. Other compensation packages on an annualized basis exceed HK$1,000,000. Other appointments will be made by the chief executive officer.

Every shareholder will be entitled to appoint and remove one director for every 10% of the issued share capital of CNCL (up to and including 50%) of which it is the holder.

In addition, the shareholder who holds more than 50 percent of the issued share capital of CNCL shall have the further right, in cases where the number of directors to be appointed by such shareholder is not in the majority, to appoint such number of additional directors as will result in the directors appointed by such shareholder exceeding by one the number of directors which the other shareholders are, in aggregate, entitled to appoint. For the purpose of this paragraph, shareholdings held by group companies in CNCL shall be aggregated and deemed to be held by one shareholder only.

Resolutions of the Board will normally be decided by a majority of votes although a number of reserved matters will require a super-majority approval. If Wharf and UIH are the only shareholders, a super-majority vote shall be all directors appointed by Wharf and one director appointed by UIH. The quorum necessary for meetings of the Board shall not be less than three directors comprising at least one director appointed by each of the parties.

(a) For the avoidance of doubt, the following matters will require, as a matter of Hong Kong law, the passing of a special resolution of the shareholders of CNCL in general meetings:

(i) alteration of object in the memorandum of association;

(ii) alteration of articles of association;

(iii) changing of company's name;

(iv) reduction of share capital;

(v) creation of reserve capital;

(vi) rendering director's liability unlimited;

(vii) resolving that the company be wound up by the court;

(viii) winding the company up voluntarily;

(ix) an instruction to a liquidator in a voluntary winding-up to sell the company's assets for shares in another company by way of a reconstruction;

(x) sanctioning the exercise of certain powers by the liquidator in a members' voluntary winding-up;

(xi) making an arrangement with creditors in a voluntary winding-up;

(xii) removing a director before the expiry of his term of office.

With respect to items (ii), (v) and (xii), the special resolution must be approved by a super-majority vote of the shareholders which is defined to be the vote of Wharf and one other shareholder.

(b) The following shall require the super-majority approval of the Board:

(i) the consolidation or amalgamation of CNCL;

(ii) the issue of any shares in CNCL, or in any of its subsidiaries to a new shareholder;

(iii) the disposal of any material assets of CNCL or any of its subsidiaries;

(iv) approval or amendment in any material respect of operating budgets and Business Plans or approval of any material action not provided in the Business Plan;

(v) any material modification of the Pay TV License.

(c) Any transaction involving CNCL and any shareholder or an affiliate of a shareholder must be approved by a

majority vote of the directors appointed by the other shareholders.

(d) A Human Resources Committee shall be established as a separate committee of the Board consisting of one representative appointed by each of the parties, which will assist and advise the chief executive officer in the interviewing and appointment of persons to senior executive positions and consultants where the remuneration of such executives or consultants exceeds the annualized value of HK$1,000,000.

4. Capitalization

(a) The parties will subscribe for shares and make loans to CNCL pro-rata to their ownership interests as outlined in a capital contribution schedule which will be attached to the Shareholders' Agreement (as defined herein). This capital contribution schedule shall conform to the Pay TV Business Plan, which will specifically set forth the amount of capitalization which will be debt financed and the amount which will be contributed by the Shareholders. Once the Pay TV Business Plan is finalized, it cannot later be amended without the consent of a super-majority of the Board. In the event that consent is not granted and additional funding is required, any shareholders whose nominated Directors voted for the proposed amendment to the Pay TV Business Plan will be entitled to contribute additional capital by providing loans to CNCL on market terms in such proportions as may be agreed between the lending Shareholders.

(b) Each of the parties shall submit their account of expenses. All expenses reasonably incurred by Wharf in connection with preparation for the application for the Pay TV License including the provision of services on a temporary or permanent basis of any non-shareholder employees shall be borne by Wharf.

These sums and any other sums reasonably spent prior to the award of the Pay TV License by each shareholder shall be treated as shareholder loans and credited to that shareholder's account as an equity contribution by the shareholder. In the event UIH does not become a shareholder of CNCL, all expenses reasonably incurred by UIH in connection with preparation for the application for the Pay TV License and other expenses incurred for services rendered to Wharf Cable shall be reimbursed to UIH within 30 days after the Acquisition Period has ended, with interest calculated at an annual rate of 10%.

(c) Within three (3) months of the date of the approval of the Pay TV Business Plan by Wharf and UIH, CNCL will use best efforts to approach financial institutions to secure debt financing in an amount as set forth in the Pay TV Business Plan. Wharf and UIH will both assist with such efforts. All shareholders must agree to any financial guarantees by the shareholders of any debt of CNCL.

5. Fixed Telecom Network

(a) A subsidiary of CNCL, Wharf Telecommunications Limited ("Wharf Tel") has submitted a bid for a fixed telecom network license (the "Telecom License") and, upon acceptance of the Telecom License, will construct, manage and operate the telecom franchise. Acceptance and/or modification of the Telecom License shall be subject to super-majority approval of the Board of CNCL.

(b) In connection with the fixed telecom network, the shareholders of CNCL shall be obligated to capitalize Wharf Tel by subscribing for additional shares of CNCL in amounts proportionate to their interests in CNCL. Furthermore, the shareholders of CNCL shall be obligated to provide their pro-rata share of any debt

financing and/or financial guarantees (which guarantees are approved by all shareholders) as is then deemed appropriate under the business plan adopted for the fixed telecom network.

6. Default in Funding Obligations

In the event a CNCL shareholder ("non-funding shareholder") does not subscribe for additional shares of CNCL and/or make capital contributions and/or financial guarantees as provided in the Pay TV Business Plan, the other CNCL shareholders ("funding shareholders") may assume the non-funding shareholder's obligations pro-rata to their shareholding interests or in such other proportions as may be agreed amongst the funding shareholders. Standard dilution provisions will apply for any Party which decides not to contribute its share of any capital contribution requirement as provided in the Pay TV Business Plan.

7. Transfer of Shares and Liquidity

(a) Any shareholder may sell or transfer no less than 25% of its committed shares and financial obligations to any party provided that the selling shareholder grants pre-emptive right to all existing shareholders, on a pro-rata basis, to purchase its shares at a price equivalent to the consideration offered under a binding letter of intent with the third party.

(b) The Board shall have no discretion to refuse to register the transfer of shares pursuant to the preceding provisions (including those specified under Paragraph 1 above) except in the case of the admittance of any new shareholder which, or the affiliates of which, have interests in any telecommunications or television businesses in Hong Kong or other countries in Asia which shall be subject

to the majority approval of the Board, such approval not to be unreasonably withheld.

(c) At any time after the seventh anniversary of the date of the Shareholders' Agreement referred to in Paragraph 12 below, UIH can serve notice on Wharf requiring it to buy the shares of CNCL owned by UIH. If Wharf and UIH cannot agree on a purchase price for the shares within thirty (30) days of receipt of UIH's notice, there will be an appraisal procedure, to be set forth in the Shareholders' Agreement which will allow for an independent determination of the fair market value of Wharf Cable.

8. Shareholder Provision of Services

(a) The provision of services to CNCL and its subsidiaries by any shareholder or its affiliates shall be undertaken on an arms-length basis, and subject to full disclosure to the Board. Where the annualized value of such services exceeds HK$1,000,000, majority approval of the Board directors appointed by non-interested shareholders shall be required. In the event that Board approval is not obtained, the Board may either choose to consider another party for the provision of such services or request the submission of bids via public tender.

(b) Wharf hereby acknowledges that it has approved the Technical Cooperation Agreement between Wharf Cable and UIH dated September 25, 1992 ("Cooperation Agreement") and that it will cause Wharf Cable to enter into a new Technical Cooperation Agreement with UIH on substantially the same terms as the Cooperation Agreement, provided however, that the term and the fees and payments shall be negotiated.

9. New Ventures

If CNCL proposes to purchase or invest in any business or venture, the business purpose of which differs materially from the business purpose of CNCL, approval of such purchase or investment including the maximum funding liability of the shareholders in relation thereto will require the super-majority consent of the Board.

10. Non-Competition Undertaking

No shareholder shall participate in related media and communication opportunities in Hong Kong without offering a right of first refusal to CNCL.

11. Shareholders' Agreement

Each of the parties will negotiate in good faith a Shareholders' Agreement containing the terms and conditions of this Agreement and other standard and customary terms, and provided the other conditions set forth in Paragraph 4 herein are satisfied, will execute the Shareholders' Agreement on the Acquisition Date.

12. Assignment

This Agreement may not be assigned or transferred by either party without the prior written consent of the other party, except to an entity controlling, controlled by or under common control with such party.

13. Binding Agreement; Term

This Agreement is legally binding upon both parties and shall remain in effect for 180 days from the date hereof. The Agreement will be automatically extended for successive 30-day periods unless terminated in writing by either party.

The Parties acknowledge their agreement with all of the terms and conditions stated above by signing below.

SIGNED by:

for and on behalf of WHARF COMMUNICATIONS INVESTMENTS LIMITED	for and on behalf of UNITED INTERNATIONAL HOLDINGS, INC.

APPENDIX W

EXCERPT FROM DRAFT MEMORANDUM OF UNDERSTANDING, DATED NOVEMBER 1993 (ADD. 623; WC00821)

THIS MEMORANDUM OF UNDERSTANDING ("Agreement") is made as of the ___ day of November, 1993.

BETWEEN

(1) WHARF COMMUNICATIONS INVESTMENTS LIMITED ("WCIL"); and

(2) UNITED INTERNATIONAL HOLDINGS, INC ("UIH")

and records the principal terms and conditions pursuant to which UIH will invest in a company known as Cable Network Communications Limited ("CNCL").

1. Corporate Structure and Purpose

   (a) CNCL has been incorporated under the laws of Hong Kong and its issued share capital is currently held 100% by WCIL.

   (b) Wharf Cable Limited ("Wharf Cable"), a wholly-owned subsidiary of CNCL, has been awarded a license to provide a subscription television service in Hong Kong (the "Pay TV License").

   (c) The subscription television service (the "Business") a conducted through Wharf Cable and several subsidiary companies of CNCL identified in Schedule I.

   (d) In addition, Wharf Telecommunications Limited ("WTL"), a wholly-owned subsidiary of WCIL, has submitted an application for a fixed telecommunications network license in Hong Kong.

   (e) Prior to the Acquisition Date (as defined), WCIL will provide UIH with a business plan for the Business (the "Pay TV Business Plan"). The Pay TV Business Plan will include annual capital and operating budgets for a ten-year period for the Business on a consolidated basis and the estimated equity or

shareholder funding for the Business ("Capital Contributions").

2. Acquisition of Shares

(a) On or before _____, 1994 (the "Acquisition Date"), and subject to the conditions specified in 2(b) below, UIH will acquire a (10%) ownership interest in CNCL (in the form of shares and/or shareholder loans as required). UIH's initial Capital Contribution to CNCL will be an amount such that, subsequent to such investment, UIH will have contributed 10% of the total Capital Contributions made to CNCL as of the Acquisition Date.

(b) UIH's investment in CNCL is conditioned upon the approval of the board of UIH and WCIL.

[. . .]

APPENDIX X

UIH V. WHARF: DAMAGE ASSESSMENT BY ROBERT M. JONES, PRESIDENT, MALARKEY-TAYLOR ASSOCIATES, INC. (MTA) (ADD. 647-683)

UIH vs WHARF
DAMAGE ASSESSMENT
by
ROBERT M. JONES, PRESIDENT
MALARKEY-TAYLOR ASSOCIATES, INC. (MTA)

I. Conclusions

Malarkey-Taylor Associates, Inc. (MTA), was requested by Holme Roberts & Owen L.L.C. (Counsel), counsel to United International Holdings, Inc. and UIH Asia Investment Company, Limited (collectively called "UIH"), to assess some of the financial damages experienced by UIH in the case of UIH vs Wharf (Holdings) Limited, et al, pending in The United States District Court in Denver, Colorado. I have utilized a detailed valuation model that accounts for the projected revenues, operating expenses and capital expenditures, and applies generally accepted valuation methodologies to yield valuation results and damage calculations. Based on my financial analysis I have reached the following conclusions.

Categories of Damage		(U.S. $ Dollars)
1. Breach of Contract		$ 67,000,000
2. Fraud		$ 50,000,000
3. Unjust Enrichment		
a. Eliminate "Hot Drops"	$ 55,500,000	
b. Decoder Rentals vs Sales (minimum)	$ 24,000,000	
c. Set-Top Box Purchases (minimum)	$ 42,000,000	
Total Unjust Enrichment		$121,500,000

II. Introduction

Purpose of study

As President of MTA, I was retained by Counsel, to determine some of the financial damage incurred by UIH as a result of breach of contract, fraud and unjust enrichment committed by a Hong Kong-based conglomerate, Wharf Holdings and its subsidiaries with respect to the licensing, development,

construction, operation and ownership of a cable television system in Hong Kong.

Qualifications of MTA

MTA has thirty years of experience in analyzing and appraising telecommunications properties in the U.S. and all parts of the world. We provide a wide range of services from market surveys, preliminary valuations and cash flow analyses to complete business plans and assistance for cable television, wireless, cellular and paging systems. Our work is performed by full-time professional telecommunications consultants and appraisers who have years of experience and expertise. We have in-house capabilities in engineering, research, finance, marketing, and programming that are utilized to provide a thorough and comprehensive approach to our projects.

Personal qualifications of Robert M. Jones

I have been associated with MTA for the past twenty-five years, assuming the position of Executive Vice President in 1985 and the President position in 1988. Besides my participation in the strategic and administrative activities of MTA, my consulting services focus on the financial, operating, management and regulatory aspects of the cable television and wireless industries. Additional knowledge and expertise have been obtained in technical, programming and marketing areas of the cable television and wireless industries which were utilized in concert with my primary areas of expertise. Much of my work involves financial appraisals, due diligence reviews, regulatory analysis, business planning, litigation support, strategic planning and industry assessments.

I am recognized as an expert in the cable television and wireless industries and have participated in a number of seminar panels, presented speeches and provided information for trade press magazines. In addition, I have provided litigation support in numerous cases, in which over twenty of them included expert testimony. I have been recognized in

state and federal courts as an expert witness in U.S. and worldwide telecommunications matters, particularly cable television.

Compensation of Robert M. Jones and MTA

MTA was retained to conduct work for Counsel on behalf of UIH concerning the litigation between UIH and Wharf. MTA's services are being billed on an hourly basis, at the rate of $200/hour for Robert M. Jones, $175/hour for Andrew R. Gefen and $135/hour for Susan Donovan. Through May 31, 1995, MTA had billed professional fees of $13,000, plus $1,407 in reimbursable expenses. Additional professional fees of about $5,000 are expected to be billed on June 30, 1995.

III. Documents used in study

Description

I was provided with various documents and materials by Counsel, including the following:

- Complaint filed November 19, 1994, United International Holdings, Inc., et al vs The Wharf (Holdings) Limited, et al
- Amended Complaint filed March 1995.
- Excerpts from a proposal prepared by Wharf for the Hong Kong Government in May 1991 for a subscription television system in Hong Kong.
- Excerpts from a proposal prepared by Wharf for the Hong Kong Government in September 1992 for a subscription television system in Hong Kong.
- Memorandum dated October 12, 1992, from R. W. Pittman to Stephen Ng and Emil Fung.
- Financing memorandum prepared by Wharf dated August 20, 1993.

- Agreement for the Supply of Equipment, dated March 27, 1993, between Wharf Communications Investment Limited and GI Corporation.
- Miscellaneous press clippings and speeches concerning the development of the cable TV system in Hong Kong.
- Miscellaneous demographic and market information for Hong Kong.
- Proposed cost reductions (undated) in programming for Wharf Cable provided by UIH.

I have also drawn upon my experience in researching, analyzing and valuing existing and proposed cable television systems in the U.S., United Kingdom, Hong Kong, Singapore, Australia, United Arab Emirates, Argentina and other parts of the world.

As a result of my analysis, I have generated this report of damages, including a description of my methodologies, valuations of Wharf's cable television system in Hong Kong under various scenarios and valuations.

IV. Methodology

General damage calculation approaches

I determined financial damages incurred by UIH by the following approaches:

- The financial model in the Financing Memorandum, dated August 20, 1993, was used as the basic model for determining the value of the cable television system in Hong Kong as of April 1994 and corresponding damage due to the breach of contract. The financial model in the Franchise Application, dated September, 1992, was used as the basic model for determining the value of the cable television system in Hong Kong as of October 1992 and corresponding damage due to fraud. Three variations of

the discounted cash flow valuation methodology were applied to the models in order to calculate the values of the system. To address the claims for breach of contract and fraud, UIH's expected ownership interest of 10% was applied to the overall values of the system to calculate UIH's share and its corresponding damage.

- Certain assumptions were varied in the basic model in order to generate scenarios that reflected the alternative system values.

- Specific cost savings for set-top boxes were determined by comparing the difference between the price achieved by UIH and the price that had been projected by Wharf, along with the difference in cash flow between the rental and sale of decoders.

Valuation Methodology

A business valuation typically is performed using one or more of three approaches: the cost approach, the market approach, and the income approach. Since the Hong Kong system would, on the relative valuation date, be relying to a large degree on projected cash flows to develop value in its intangible assets, primarily its license, the cost approach is not appropriate in this case. The market, or comparable sales, approach has not been used because of the absence of an adequate number of relevant cable television transactions and the absence of any system that would be comparable to the system in Hong Kong. Therefore, this valuation has been based on the income approach to valuation.

There are various established methods of determining a business entity's total market value using the income approach. The most commonly accepted methods are as follows:

1. Capitalization of projected net cash flow.
2. Capitalization of single-year operating profit.
3. Dividend capitalization.
4. Market price-to-book equity.

5. Price-earnings multiple.

Of the methods listed above, MTA normally relies primarily upon the capitalization of projected net cash flow, or "discounted cash flow" approach, to calculate total value. MTA generally favors discounted cash flow methodology because it considers the broadest range of factors that will affect both the present and future income, and therefore value, of a property.

I have prepared discounted cash flow valuations for the system as of October 1992 and March 1994, along with several additional scenarios, which analyze the projected return on investment and return on equity.

Discounted Cash Flow Methodology

I have utilized the financial models in the Financing Memorandum, dated August 20, 1993, and Franchise Application, dated September 1992, and have generated three discounted cash flow models to arrive at a total system value. The return-on-equity model utilizes an after-tax discount rate which is applied to the net cash flow, including the projected residual value, after recognizing debt service and taxes. The return-on-investment model utilizes a pre-tax discount rate, which is applied to the projected operating cash flows, less capital expenditures, plus the residual value of the system.

Description of the Model

Both the return-on-equity and return-on-investment methods are dependent upon projections of the system's future net cash flow and residual value and on selection of an appropriate discount rate. My calculations are based on an analysis of the detailed projections in the Financing Memorandum dated August 20, 1993, and Franchise Application, dated September 1992, and an assessment of a variety of factors which will affect future cash flow including housing growth, plant mileage, basic and pay subscriber growth, subscriber rates, operating expenditures, and capital expenditures. Assumptions

and Explanatory Comments, provide details of the projections for plant mileage, housing, subscriber growth, subscriber, revenues and operating expenses for all years throughout the projection period, capital expenditures anticipated for the system, and miscellaneous assumptions. A Statistical Overview presents the 10-year projections for certain key factors. The Income Statement presents the projected revenues, expenses, operating income, depreciation, taxes and net income after tax. The Statement of Cash Flow summarizes the sources of cash, such as net income, depreciation and decoder deposits, along with the applications of funds of cash, such as capital expenditures and system acquisitions, resulting in the annual net change in cash position of the system. A summary of the Capital Expenditures is driven by the assumptions presented in the Assumptions and Explanatory Comments. A Financing Summary presents the timing of the draw down and repayment of the working capital and project loans, and the timing of the equity contributions.

Net Cash Flow/Return on Equity

To calculate future cash flows, I have utilized the Financing Memorandum's and Franchise Application's projected future subscribers, revenues, operating expenses, capital expenditures, debt service and taxes to compute the projected cash flow that would be available to the equity holders. The applicable cash flow stream is identified in the Financing Memorandum and Franchise Application as the "Change in Cash" in the Sources and Uses of Funds Statement, as shown in the valuation calculations in this report. The projected cash flows for the system, plus the last-year residual value of the system, are then discounted to their present value using a reasonable expected after-tax equity return.

Using the return-on-equity model, I have generated a range of values for the system. The differences in the range are based on differences in the discount rates due to variations in the equity premium risk factor which gives effect to the expected

level of investment risk associated with a start-up cable television system in Hong Kong, as shown in the valuation calculations in this report.

Net Cash Flow/Return On Investment

This discounted cash flow method, similar to the preceding method, is used to measure the net present value of the pre-tax operating cash flow, less capital expenditures, plus the residual value of the system, that represent the return on the total investment rather than a return on equity. To calculate future cash flows, I have used the same projections for future subscribers, revenues, operating expenses, and capital expenditures as in the return-on-equity method. The projected cash flows for the system, plus the last-year residual value of the system, less capital expenditures, are then discounted to their present value using an acceptable discount factor based on the weighted average cost of money or pre-tax equity return, as appropriate.

Two similar, but slightly different, approaches, utilizing pre-tax cash flows from the Financing Memorandum and Franchise Application, have been used in the return-on-investment valuations. In the first method, the cash flow labeled "Funding Surplus (Requirement)" in the Cash Flow Statement recognizes the annual availability of or requirement for funds after recognizing the revenues, expenses and capital expenditures. This cash flow stream is discounted back to the present, along with the Year 10 residual value, at a weighted average discount rate. The second method is a straight-forward method that calculates the residual value of the system in Year 10 and applies the rate to the value to calculate the net present value of the system.

I have used the return on investment model, like the return on equity model, to generate a range of values for the system. The differences in the range are based on differences in the discount rate due to variations in the equity premium risk factor which

gives effect to the expected level of investment risk associated with a start-up cable television system in Hong Kong.

Cash Flow Projections

I have utilized the available data to analyze the franchise area, the costs incurred to meet franchise obligations, the length of the franchise period, the degree of competition, and the projected results of the system's operations. I also have examined factors that affect the industry, such as possibility of regulation, competitive threats, rapid technical changes, and the development of additional programming services. These factors have been incorporated into my projections of the system's future cash flows.

Residual Value

Under both the return-on-equity and the return-on-investment approaches, I have calculated a residual value for the system at the end of the ten-year projection period. The residual represents the anticipated market value of the system at the end of the projection period. This value is added to the system's cash flow stream in the final year of the projection period and then discounted back to present value.

The residual is calculated as a multiple of the projected annual cash flow in the final year of the discounted cash flow analysis. The multiple used reflects the degree of likelihood that the system will have significant future income, and therefore value, at the end of the projection period. If the franchise is likely to be renewed on the same terms as the current franchises, and if there is a realistic expectation of continued growth in income, a higher multiple will be applied. On the other hand, if the franchise is not likely to be renewed, or is renewed on terms and conditions significantly different from the current franchise, or if competitive or technological factors jeopardize the operator's future income, a lower multiple is appropriate.

Based on my experience and familiarity with the cable industry, and my analysis of the system, I have calculated the

system's residual value using tenth-year cash flow times a multiple of ten. This multiple reflects my view that the system is likely to have significant value in ten years, but that certain unknowns and uncertainties must be factored into the multiple nonetheless. There is no guarantee of renewal, and it is expected that the negotiation process required to obtain a renewal could result in a new franchise that will be on terms different and possibly less favorable than the current franchise. In addition, meaningful competition is expected to be present in the market in Year 10 which will affect the system's future activities.

Discount Rate

The discount rate represents the investor's expected return on capital, i.e., the rate of return that reasonably reflects the risk of being undertaken by the investor. Considering the relative risk associated with the cable industry in comparison to other industries, and the risk associated with the system in particular, I have adopted a range of discount rates for the discounted cash flow methods. For the October 1992 after-tax return-on-equity model, I have applied discount rates of 12.99%, 14.03% and 15.06%, while in the pre-tax return-on-investment models, the discounts are 12.65%, 13.40% and 14.15%, based on 40% debt and 60% equity and a tax rate of 17.50%. For the March 1994 after-tax return-on-equity model, I have applied discount rates of 12.99%, 14.03% and 15.06%, while in the pre-tax return-on-investment models, the discounts are 11.88%, 12.50% and 13.13%, based on 50% debt and 50% equity and a tax rate of 17.50%. The discount rates used in the two discounted cash flow methods are indicated on Exhibits A-1, B-1 and C-1.

I have calculated the discount rate for the return-on-equity model by first identifying a risk-free rate of return (the current rate of return available on government securities as of the valuation date) and then adding the historical premium for risk that the market has actually provided the holders of representative publicly-traded cable television stocks. This

assumes that using such historical data will provide a reasonable guide to future return expectations after recognition for risk.

The discount rate incorporates systematic risk, which is the sensitivity of the return on the subject investment to changes in the return for the market as a whole. I have also incorporated into the discount rate unsystematic risk, which is any risk premium directly associated with the industry, particular company, or the subject system. Thus, internal risk factors, such as the possibility of competition, municipal and customer relations, rate structure, franchise stability, etc., have been factored into the discount rate.

The discount rate used in the return-on-investment model is determined by the "band of investment" method. The rate is based on an average of the rate applicable to equity and the cost of debt, i.e. interest rate, weighted in the proportions that are utilized for the particular system.

Application of Methodology for Valuation of Breach of Contract

The first method shown on Exhibit A is based on the net present value (NPV) of the cable system's projected "Funding Surplus/(Requirement)" and the NPV of the Year 10 "Residual Value." The Funding Surplus/(Requirement) is taken from page 12 of this report (Financial Projection 3, Financing Memorandum-August 20, 1993, Statement of Cash Flow) and the Residual Value is taken from the EBITDA on page 13 (Financial Projection 3, Financing Memorandum-August 20, 1993, Income Statement). The discount rates are presented in Exhibit A-1 and are based on a computed equity rate, tax rate, debt interest rate, debt/equity ratio and weighted average return. The stream of Funding Surplus/(Requirement) is discounted to its NPV and added to the NPV of the Residual Value (Year 10 EBITDA x 10). The total value in HK$$ is converted to US$$ at 7.74 and UIH's share is computed at 10%. The same methodology is applied to three different discount rates.

The second method shown on Exhibit A is based on the NPV of the "Change in Cash" the NPV of the Year 10 "Residual Value." The Change in Cash is taken from page 12 of this report (Financial Projection 3, Financing Memorandum-August 20, 1993, Statement of Cash Flow), the Residual Value is taken from EBITDA on page 13 (Financial Projection 3, Financing Memorandum-August 20, 1993, Income Statement) and the Equity Contribution is taken from page 12 of this report (Financial Projection 3, Financing Memorandum-August 20, 1993, Statement of Cash Flow). The discount rates are presented in Exhibit A-1. The stream of Changes in Cash is discounted to its NPV and added to the NPV of the Residual Value (Year 10 EBITDA x 10). The total value in HK$$ is converted to US$$ at 7.74 and UIH's share is computed at 10%. The same methodology is applied to three different discount rates.

The third method shown on Exhibit A is similar to the second method and is based on the NPV of the Year 10 "Residual Value," plus the NPV of the Year 10 "Ending Cash," less the NPV of the "Equity Contribution." The Residual Value is taken from the EBITDA on page 13 (Financial Projection 3, Financing Memorandum-August 20, 1993, Income Statement) and the Ending Cash and Equity Contribution are taken from page 12 of this report (Financial Projection 3, Financing Memorandum-August 20, 1993, Statement of Cash Flow). The discount rates are presented in Exhibit A-1. The Residual Value (Year 10 EBITDA x 10) is discounted to its NPV and added to the NPV of the Year 10 Ending Cash. The total value in HK$$ is converted to US$$ at 7.74 and UIH's share is computed at 10%. The same methodology is applied to three different discount rates.

Value Conclusions for Breach of Contract

The valuations as of March 18, 1994, yielded by each of the methods described above are shown in Exhibit A on the following page. In arriving at the final system valuation, I have

averaged the values of the three discounted cash flow methods, i.e., the return-on-equity and both return-on-investment methods. Based upon the foregoing analysis and a consideration of the various methods, I conclude that the loss of value to UIH as of March 18, 1994 was US$67,000,000.

Exhibit A

Damage Assessment
MTA-EMCI
Breach of Contract-Lost Profits

Estimated System Values (in millions)	Gross Val. HK $$	Gross Val. US $$	UIH Val. U.S. $$
(Based on "Funding Surplus/(Requirement)" and with residual value @ 10X)			
Discount Rate, pre-tax wtd. avg. @ 11.9%	$5,508	$712	$71
Discount Rate, pre-tax wtd. avg. @ 12.5%	$5,058	$653	$65
Discount Rage, pre-tax wtd. avg. @ 13.1%	$4,634	$599	$60
Average			$65
(Based on "Change in Cash" and with residual value @ 10X)			
Discount Rate, after-tax equity return @ 13.0%	$5,378	$695	$69
Discount Rate, after-tax equity return @ 14.0%	$4,768	$616	$62
Discount Rate, after-tax equity return @ 15.1%	$4,217	$545	$54
Average			$62
(Based on Year 10 residual value @ 10X, plus Ending Cash in Year 10)			
Discount Rate, pre-tax wtd. avg. @ 11.9%	$6,117	$790	$79
Discount Rate, pre-tax wtd. avg. @ 12.5%	$5,704	$737	$74
Discount Rate, pre-tax wtd. avg. @ 13.1%	$5,316	$687	$69
Average			$74

Exhibit A-1

Damage Assessment
MTA-EMCI
Computation of Discount Rates

Equity Discount Rate -			
Risk-free equity return	7.00%	7.00%	7.00%
Equity risk premium	7.00%	8.00%	9.00%
Beta	1.25	1.25	1.25
	8.75%	10.00%	11.25%
Pre-tax equity return	15.75%	17.00%	18.25%
Tax rate	17.50%	17.50%	17.50%
After-tax equity return	12.99%	14.03%	15.06%
Weighted Average Return on Investment -			
Pre-tax equity return	15.75%	17.00%	18.25%
Equity portion of total investment	50.00%	50.00%	50.00%
Debt interest rate	8.00%	8.00%	8.00%
Debt portion of total investment	50.00%	50.00%	50.00%
Weighted Average Return	11.88%	12.50%	13.13%

Exhibit A-2

Financial Projections
Financing Memorandum - August 20, 1993
CNCL Consolidated Financial Projections

HK $ million	First Ten Years										1993-2002
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTAL
Statement of Cash Flow											
Net Income After Tax	HK($21)	HK($346)	HK($421)	HK($207)	HK$262	HK$841	HK$1,006	HK$1,359	HK$1,480	HK$1,584	HK$5,346
Less: Expenses Capitalized	(461)	(844)	(436)	(328)	(355)	(384)	(414)	(438)	(485)	(493)	(4,620)
Add: Income Taxes	0	0	0	0	0	0	0	0	208	343	549
Add: Depreciation & Amortization	0	117	399	580	634	645	677	703	708	719	5,185
Add: Net Decoder Deposit Received	7	96	98	88	64	53	47	49	13	14	547
(Increase) Decrease in Other Working Capital	44	(15)	(58)	(56)	(56)	(41)	(37)	(34)	(28)	(23)	(304)
Net Source of Funds from Operations	(431)	(992)	(418)	74	569	917	1,279	1,643	1,914	2,144	6,703
Application of Funds											
Capital Expenditures	1,277	868	328	265	208	215	206	220	184	175	4,007
FSS Acquisition	(428)	0	0	0	0	0	0	0	0	0	(428)
Funding Surplus (Requirement)	(2,137)	(1,860)	(747)	(191)	301	702	1,073	1,426	1,750	1,969	2,267
Cumulative Funding Requirement	(2,137)	(4,017)	(4,785)	(4,955)	(4,854)	(3,952)	(2,880)	(1,452)	299	2,267	

HK $ million	First Ten Years										1993-2002
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTAL
Sources of Financing											
Equity Contribution	1,237	1,179	348	193	0	0	0	0	0	0	2,957
Project Loan	0	1,600	400	0	(100)	(250)	(500)	(575)	(575)	0	0
Working Capital Loan	900	(900)	0	0	0	0	0	0	0	0	0
Total	HK$2,137	HK$1,879	HK$748	HK$193	HK($100)	HK($250)	HK($500)	HK($575)	HK($575)	HK$0	HK$2,957
Change in Cash	HK($0)	HK($1)	HK$1	HK$2	HK$201	HK$452	HK$573	HK$853	HK$1,175	HK$1,968	
Beginning Cash	HK$0	HK($0)	HK($1)	HK($1)	HK$2	HK$203	HK$855	HK$1,227	HK$2,080	HK$3,268	
Ending Cash - Annual	HK($0)	HK($1)	HK($1)	HK$2	HK$203	HK$655	HK$1,227	HK$2,080	HK$3,258	HK$5,224	
Ending Cash - Year 10	0	0	0	0	0	0	0	0	0	HK$5,224	

Exhibit A-3

Financial Projections
Financing Memorandum - August 20, 1993
CNCL Consolidated Financial Projections

HK $ million	First Ten Years 1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	1993-2002 TOTAL
Income Statement											
Revenue:											
Gross Basic Revenue	HK$5	HK$325	HK$918	HK$1,532	HK$2,103	HK$2,580	HK$3,011	HK$3,403	HK$3,747	HK$4,031	HK$21,655
Less: Promotional Incentives	(2)	(54)	0	0	0	0	0	0	0	0	(56)
Net Basic Revenue	3	271	918	1,532	2,103	2,580	3,011	3,403	3,747	4,031	21,599
Star TV Premium Channels or Alternate	0	17	77	180	239	202	345	395	434	464	2,424
Less: Promotional Incentives	0	(11)	0	0	0	0	0	0	0	0	(11)
Net Star TV Premium Channels or Alternate	0	6	77	180	239	292	348	395	434	464	2,413
Other Premium Revenue	0	0	16	55	86	105	123	139	183	186	842
Other Distribution Revenue	9	28	35	38	41	45	48	51	54	57	407
Total Operating Revenue	HK$12	HK$388	HK$1,048	HK$1,706	HK$2,469	HK$3,022	HK$3,528	HK$3,988	HK$4,358	HK$4,717	HK$25,261
Installation/Connection Revenue	0	2	20	30	87	68	99	111	106	115	662
Total Revenue	HK$12	HK$308	HK$1,066	HK$1,815	HK$2,556	HK$3,111	HK$3,627	HK$4,099	HK$4,496	HK$4,833	HK$25,923
Less: Government Fees and Royalties	(1)	(20)	(83)	(143)	(202)	(247)	(289)	(329)	(382)	(389)	(2,066)
Net Revenue	HK$11	HK$288	HK$903	HK$1,872	HK$2,354	HK$2,564	HK$3,330	HK$3,770	HK$4,134	HK$4,444	HK$23,856

HK $ million	First Ten Years										1993-2002
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTAL
Operating Expenses:											
TV Operations	HK$235	HK$603	HK$845	HK$712	HK$771	HK$833	HK$900	HK$956	HK$1,012	HK$1,073	HK$7,739
Cable Operations	185	591	588	845	747	840	910	971	1,037	1,106	7,800
Corporate	40	51	62	65	70	75	81	86	92	97	719
Other Distribution	25	38	39	43	46	50	54	57	61	64	477
Bad Debt	0	3	10	18	25	30	35	40	44	47	253
Total Operating Expenses	HK$485	HK$1,256	HK$1,324	HK$1,483	HK$1,659	HK$1,828	HK$1,980	HK$2,109	HK$2,246	HK$2,387	HK$16,788
EBITDA	HK($474)	HK($966)	HK($341)	HK($169)	HK($805)	HK($1,038)	HK($1,358)	HK($1,688)	HK($1,686)	HK($2,057)	HK($7,070)
Operating Margin (As of % of Total Operating Rev	N/A	N/A	N/A	11%	28%	34%	36%	42%	43%	44%	
Operating Margin (As of % of Net Revenue)	N/A	N/A	N/A	11%	30%	38%	41%	44%	46%	48%	
Residual Value in Year 10	0	0	0	0	0	0	0	0	0	20,568	
Add(Less):											
Interest Income / (Expense)	HK($8)	HK$(75)	HK($117)	HK($145)	HK($154)	HK($131)	HK($89)	HK($28)	HK$41	HK$96	HK($610)
Capitalized Expenses	461	844	436	329	355	384	414	439	485	493	4,620
Depreciation & Amortization	0	(117)	(398)	(580)	(834)	(646)	(877)	(703)	(706)	(719)	(5,185)
Net Income Before Tax	HK($21)	HK$(346)	HK($421)	HK($207)	HK$282	HK$641	HK$1,006	HK$1,389	HK$1,668	HK$1,927	HK$5,895
Income Tax	0	0	0	0	0	0	0	0	(206)	(343)	(549)
Net Income After Tax	HK($21)	HK$(346)	HK($421)	HK($207)	HK$282	HK$641	HK$1,006	HK$1,389	HK$1,480	HK$1,584	HK$5,346

Application of Methodology for Valuation of Fraud

The first method shown on Exhibit B is based on the net present value (NPV) of the cable system's projected "Funding Surplus/(Requirement)" and the NPV of the Year 10 "Residual Value." The Funding Surplus/(Requirement) is taken from page 19 of this report (Financial Projection 2, Franchise Application-September 30, 1992, Statement of Cash Flow and the Residual Value is taken from the EBITDA on page 20 (Financial Projection 2, Franchise Application-September 30, 1992, Income Statement). The discount rates are presented in Exhibit B-1 and are based on a computed equity rate, tax rate, debt interest rate, debt/equity ratio and weighted average return. The stream of Funding Surplus/(Requirement) is discounted to its NPV and added to the NPV of the Residual Value (Year 10 EBITDA x 10). The total value in HK$$ is converted to US$$ at 7.74 and discounted by 15% for risks associated with the pending Hong Kong franchise deliberations and the HutchVision contract, with UIH's share computed at 10% of the resulting amount. The same methodology is applied to three different discount rates.

The second method shown on Exhibit B is based on the NPV of the "Change in Cash" the NPV of the Year 10 "Residual Value." The Change in Cash is taken from page 19 of this report (Financial Projection 2, Franchise Application-September 30, 1992, Statement of Cash Flow), the Residual Value is taken from the EBITDA on page 20 (Financial Protection 2, Franchise Application-September 30, 1992, Income Statement) and the Equity Contribution is taken from page 19 of this report (Financial Projection 2, Franchise Application-September 30, 1992, Statement of Cash Flow). The discount rates are presented in Exhibit B-1. The stream of Changes in Cash is discounted to its NPV and added to the NPV of the Residual Value (Year 10 EBITDA x 10). The total value in HK$$ is converted to US$$ at 7.74 and discounted by 15% for risks associated with the pending Hong Kong franchise deliberations and the HutchVision contract, with UIH's share

computed at 10% of the resulting amount. The same methodology is applied to three different discount rates.

The third method shown on Exhibit B is similar to the second method and is based on the NPV of the Year 10 "Residual Value," plus the NPV of the Year 10 "Ending Cash," less the NPV of the "Equity Contribution." The Residual Value is taken from the EBITDA on page 20 (Financial Projection 2, Franchise Application-September 30, 1992, Income Statement) and the Ending Cash and Equity Contribution are taken from page 19 of this report (Financial Projection 2, Franchise Application-September 30, 1992, Statement of Cash Flow). The discount rates are presented in Exhibit B-1. The Residual Value (Year 10 EBITDA x 10) is discounted to its NPV and added to the NPV of the Year 10 Ending Cash. The total value in HK$$ is converted to US$$ at 7.74 and discounted by 15% for risks associated with the pending Hong Kong franchise deliberations and the HutchVision contract, with UIH's share computed at 10% of the resulting amount. The same methodology is applied to three different discount rates.

Value Conclusions for Fraud

The valuations as of October 1992 yielded by each of the methods described above are shown in Exhibit B on the following page. In arriving at a final system valuation, I have averaged the values of the three discounted cash flow methods, *i.e.*, the return-on-equity and both return-on-investment methods and included an additional risk discount of 15% to account for the absence of a subscription license with the Hong Kong government and a contract with HutchVision for certain programming. Based upon the foregoing analysis and a consideration of the various methods, I conclude that the loss of value to UIH as of October 1992, was US$50,000,000.

Exhibit B

Damage Assessment
MTA-EMCI
Fraud - Lost Value

Estimated System Values w/15% Discount for Risk re Franchise and HutchVision (in millions)	Gross Val. HK $$	Gross Val. US $$	UIH Val. U.S. $$
(Based on "Funding Surplus/(Requirement)" and with residual value @ 10X)			
Discount Rate, pre-tax wtd. avg. @ 12.7%	$4,192	$542	$54
Discount Rate, pre-tax wtd. avg. @ 13.4%	$3,744	$484	$48
Discount Rate, pre-tax wtd. avg. @ 14.2%	$3,328	$430	$43
Average			$49
(Based on "Change in Cash" and with residual value @ 10X)			
Discount Rate, after-tax equity return @ 13.0%	$4,305	$556	$56
Discount Rate, after-tax equity return @ 14.0%	$3,781	$486	$49
Discount Rate, after-tax equity return @ 15.1%	$3,271	$423	$42
Average			$49
(Based on Year 10 residual value @ 10X, plus Ending Cash in Year 10)			
Discount Rate, pre-tax wtd. avg. @ 12.7%	$4,510	$583	$58
Discount Rate, pre-tax wtd. avg. @ 13.4%	$4,090	$528	$53
Discount Rate, pre-tax wtd. avg. @ 14.2%	$3,702	$478	$48
Average			$53

Exhibit B-1

Damage Assessment
MTA-EMCI
Computation of Discount Rates

Equity Discount Rate -			
Risk-free equity return	7.00%	7.00%	7.00%
Equity risk premium	7.00%	8.00%	9.00%
Beta	1.25	1.25	1.25
	8.75%	10.00%	11.25%
Pre-tax equity return	15.75%	17.00%	18.25%
Tax rate	17.50%	17.50%	17.50%
After-tax equity return	12.99%	14.03%	15.06%
Weighted Average Return on Investment -			
Pre-tax equity return	15.75%	17.00%	18.25%
Equity portion of total investment	60.00%	60.00%	60.00%
Debt interest rate	8.00%	8.00%	8.00%
Debt portion of total investment	40.00%	40.00%	40.00%
Weighted Average Return	12.65%	13.40%	14.15%

Exhibit B-2

Financial Projections
Franchise Application - September 30, 1992

HK $ million	First Ten Years 1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	1993-2002 TOTAL
Statement of Cash Flow											
Net Income After Tax	5	(255)	(565)	(730)	(381)	34	535	762	1,120	1,583	2,000
Less: Expenses Capitalized	(500)	(880)	(411)	208	210	215	209	211	211	208	(477)
Add: Income Taxes	0	0	0	0	0	0	0	206	384	496	1,091
Add: Depreciation & Amortization	0	180	250	281	300	308	307	318	317	284	2,507
Add: Net Decoder Deposit Received	18	81	108	86	82	88	54	47	43	33	501
(Increase)/Decrease in Other Working Capital	0	0	0	0	0	0	0	0	0	0	0
Net Source of Funds from Operations	(648)	(664)	(815)	(183)	182	817	1,104	1,538	2,085	2,805	5,838
Application of Funds											
Capital Expenditures	(1,443)	(824)	(810)	(224)	(234)	(238)	(244)	(228)	(204)	(162)	(4,714)
Funding Surplus/(Requirement)	(2,000)	(1,701)	(1,425)	(407)	(41)	378	880	1,308	1,877)	2,442	1,126
Cumulative Funding Requirement	(2,000)	(3,000)	(5,283)	(5,700)	(5,742)	(5,363)	(4,503)	(3,194)	(1,310)	1,125	

HK $ million	First Ten Years										1993-2002
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTAL
Sources of Financing											
Equity Contribution	2,087	775	1,350	300	0	0	0	0	0	0	4,512
Project Loan	0	1,000	400	0	(100)	(250)	(500)	(575)	(676)	0	0
Working Capital Loan	0	0	0	0	0	0	0	0	0	0	0
Total	2,087	2,376	1,780	300	(100)	(250)	(500)	(575)	(676)	0	4,512
Change in Cash	(1)	584	325	(107)	(141)	120	360	734	1,302	2,442	
Beginning Cash	0	(1)	594	818	812	870	788	1,158	1,883	3,194	
Ending Cash - Annual	(1)	584	818	812	470	700	1,158	1,883	3,184	6,837	
Ending Cash - Year 10	0	0	0	0	0	0	0	0	0	5,837	

Exhibit B-3

Financial Projections
Franchise Application - September 30, 1992
Wharf Cable Financial Case

HK $ million	First Ten Years										1993-2002
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTAL
Income Statement											
Revenue:											
Gross Basic Revenue	5	259	669	1,464	1,962	2,491	3,048	3,556	4,058	4,651	22,289
Less: Promotional Incentives	0	(3)	(2)	(5)	(8)	(11)	(14)	(17)	(21)	(24)	(104)
Net Basic Revenue	5	255	867	1,459	1,954	2,480	3,033	3,638	4,037	4,627	22,185
Star TV Premium Channels or Alternate											0
Less: Promotional Incentives											0
Net Star TV Premium Channels or Alternate	0	0	0	0	0	0	0	0	0	0	0
Other Premium Revenue	0	20	107	247	394	534	684	833	963	1,140	4,953
Other Distribution Revenue	0	0	0	0	0	0	0	0	0	0	0
Less: Royalty Fees	(0)	(16)	(73)	(127)	(172)	(210)	(267)	(313)	(359)	(402)	(1,846)
Total Operating Revenue	5	292	901	1,579	2,177	2,706	3,450	4,056	4,671	5,265	25,192
Installation/Connection Revenue	0	40	77	72	78	84	90	91	95	93	720
Total Revenue	5	332	977	1,652	2,255	2,890	3,540	4,147	4,766	5,358	25,912
Less: Government Fees and Royalties	(0)	(16)	(73)	(127)	(172)	(218)	(268)	(313)	(350)	(402)	(1,946)
Net Revenue	5	316	904	1,525	2,083	2,682	3,272	3,634	4,406	4,957	23,966

HK $ million	First Ten Years										1993-2002
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTAL
Operating Expenses:											
TV Operations											0
Cable Operations											0
Corporate											0
Other Distribution											0
Bad Debt											0
Total Operating Expenses	800	1,213	1,542	1,576	1,653	2,021	2,190	2,380	2,518	2,649	18,713
EBITDA	(???)	(???)	(???)	(154)	230	641	1,082	1,444	1,693	2,306	5,253
Operating Margin (As a % of Total Operating Revenue)	-13???%	-???%	-71%	-10%	11%	23%	31%	38%	41%	44%	
Operating Margin (As a % of Net Revenue)	-13???%	-264%	-79%	-10%	11%	24%	33%	38%	43%	47%	
Residual Value in Year 10	0	0	0	0	0	0	0	0	0	23,078	
Add/(Less):											
Interest Income/(Expense)	0	(40)	(65)	(96)	(100)	(83)	(31)	45	148	264	24
Capitalized Expenses	???	???	411	(208)	(210)	(215)	(209)	(211)	(211)	(208)	477
Depreciation & Amortization	0	(???)	(256)	(261)	(300)	(308)	(307)	(318)	(317)	(284)	(2,587)
Net Income Before Tax	5	(255)	(???)	(738)	(381)	36	536	860	1,514	2,078	3,187
Income Tax	0	0	0	0	0	0	0	(208)	(394)	(496)	(1,097)
Net Income After Tax	5	(255)	(565)	(738)	(361)	34	535	762	1,120	1,583	2,090

Value Comparisons for UIH Contributions

Elimination of "Hot Drops"

To recognize the potential effect of the lost revenues from "hot drops," I used the basic model from the August 1993 Financing Memorandum and reduced the applicable revenues by about 1.8% each year, based conservatively on an unauthorized use penetration of 5% in the public housing units which represent about 36% of the total housing units, i.e. 5% X 36% = 1.8%. The application fo the methodology for the valuation of the system, assuming reduced revenues due to "hot drops," is the same as the methodology for Breach of Contract and Fraud described previously. The resulting value of the system in Exhibit C was compared to the value computed for Breach of Contract (Exhibit A) and the difference was determined. The difference in value in HK$$ is converted to US$$ at 7.74.

The changes in cash flow resulted in changing the system's value by US$55,500,000. The summary schedules are shown on the following pages.

Exhibit C

Damage Assessment
MTA-EMCI
Elimination of "Hot Drops"

Estimated System Values (in millions)	Gross Val. HK$$	Gross Val. US$$	UIH Val. Base U.S.$$	Diff. from base U.S.$$
(Based on "Funding Surplus/(Requirement)" and with residual value @ 10X)				
Discount Rate, pre-tax wtd. avg. @ 11.9%	$5,020	$649	$712	$63
Discount Rate, pre-tax wtd. avg. @ 12.5%	$4,592	$593	$653	$60
Discount Rate, pre-tax wtd. avg. @ 13.1%	$4,919	$541	$599	$57
Average				$60
(Based on "Change in Cash" and with residual value @ 10X)				
Discount Rate, after-tax equity return @ 13.0%	$4,930	$637	$695	$58
Discount Rate, after-tax equity return @ 14.0%	$4,354	$562	$616	$54
Discount Rate, after-tax equity return @ 15.1%	$3,833	$495	$545	$50
Average				$54
(Based on Year 10 residual value @10X, plus Ending Cash in Y)				
Discount Rate, pre-tax wtd. avg. @ 11.9%	$5,688	$735	$790	$55
Discount Rate, pre-tax wtd. avg. @ 12.5%	$5,298	$684	$737	$52
Discount Rate, pre-tax wtd. avg. @ 13.1%	$4,932	$637	$687	$50
Average				$53

Exhibit C-1

Damage Assessment
MTA-EMCI
Computation of Discount Rates

Equity Discount Rate -			
Risk-free equity return	7.00%	7.00%	7.00%
Equity risk premium	7.00%	8.00%	9.00%
Beta	1.25	1.25	1.25
	8.75%	10.00%	11.25%
Pre-tax equity return	15.75%	17.00%	18.25%
Tax rate	17.50%	17.50%	17.50%
After-tax equity return	12.99%	14.03%	15.06%
Weighted Average Return on Investment-			
Pre-tax equity return	15.75%	17.00%	18.25%
Equity portion of total investment	50.00%	50.00%	50.00%
Debt interest rate	8.00%	8.00%	8.00%
Debt portion of total investment	50.00%	50.00%	50.00%
Weighted Average Return	11.88%	12.50%	13.13%

Exhibit C-2

Financial Projections
Financing Memorandum - August 20, 1993
CNCL Consolidated Financial Projections

HK $ million	First Ten Years										1993-2002
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTAL
Statement of Cash Flow											
Net Income After Tax	HK($21)	HK($352)	HK($440)	HK($239)	HK$217	HK$586	HK$942	HK$1,297	HK$1,400	HK$1,495	HK$4,867
Less: Expenses Capitalized	(461)	(844)	(436)	(329)	(355)	(384)	(414)	(439)	(485)	(493)	(4,620)
Add: Income Taxes	0	0	0	0	0	0	0	0	206	343	549
Add: Depreciation & Amortization	0	117	398	580	634	648	677	703	708	719	5,185
Add: Net Decoder Deposit Received	7	96	96	86	64	53	47	49	13	14	547
(Increase)/Decrease in Other Working Capital	44	(15)	(58)	(56)	(56)	(41)	(37)	(34)	(28)	(23)	(304)
Net Source of Funds from Operations	(431)	(898)	(437)	42	524	862	1,215	1,578	1,834	2,058	6,244
	0	0	0	0	0	0	0	0	0	20,670	
Application of Funds											
Capital Expenditures	(1,277)	(898)	(329)	(286)	(268)	(215)	(206)	(220)	(164)	(175)	(4,007)
FSS Acquisition	(429)	0	0	0	0	0	0	0	0	0	(428)
Funding Surplus/(Requirement)	(2,137)	(1,688)	(758)	(223)	256	647	1,009	1,368	1,670	1,883	1,808
Cumulative Funding Requirement	(2,137)	(4,023)	(4,789)	(5,013)	(4,758)	(4,110)	(3,101)	(1,746)	(75)	1,808	

HK $ million	First Ten Years										1993-2002
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTAL
Sources of Financing											
Equity Contribution	1,237	1,179	348	193	0	0	0	0	0	0	2,957
Project Loan	0	1,600	400	0	(100)	(250)	(500)	(575)	(575)	0	0
Working Capital Loan	900	(900)	0	0	0	0	0	0	0	0	0
Total	HK$2,137	HK$1,879	HK$748	HK$193	HK($100)	HK($250)	HK($500)	HK($575)	HK($575)	HK$0	HK$2,957
Change in Cash	HK($0)	HK($7)	HK($18)	HK($30)	HK$156	HK$387	HK$509	HK$761	HK$1,095	HK$1,883	
Beginning Cash	HK$0	HK($0)	HK($7)	HK($25)	HK($56)	HK$101	HK$497	HK$1,006	HK$1,786	HK$2,882	
Ending Cash	HK($0)	HK($7)	HK($25)	HK($58)	HK$101	HK$497	HK$1,006	HK$1,786	HK$2,862	HK$4,785	
Ending Cash - Year 10	0	0	0	0	0	0	0	0	0	HK$4,765	

Decoder Rentals vs Sales

To determine the effect of the rental of decoders rather than a combination of rental and sale, I used the basic financial model from the Financing Memorandum and computed the difference in cash flow that would result under the following scenarios: (1) the cash flow resulting from a combination of rental and sale of decoders, using the rates proposed in the September 1992 Franchise Proposal and the adjusted penetration levels demonstrated by the SRH market research and(2) the cash flow resulting from the use of 100% rental of decoders in the August 1993 Financing Memorandum.

The changes in cash flow resulted in a difference of a minimum of US$24,000,000, as shown on the following pages.

If I had calculated the change in cash flow on the basis of a strategy of 100% sale of decoders compared to a strategy of 100% rental, the change in cash flow would have been significantly higher, after adjusting for the decrease in penetration that would occur as demonstrated by the SRH market research.

UIH vs Wharf

Decoder Rentals vs Sales

Damage Calculation:	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Subscribers (000's)	28	280	448	818	734	862	868	912	926	940
Average Subscribers (000's)	12	137	348	632	678	768	838	865	919	933
Cost of Decoder	1,300	1,300	1,300	1,300	1,300	1,360	1,300	1,300	1,300	1,300
Price of Decoder to Customer	1,000	1,000	1,260	1,434	1,505	1,581	1,660	1,743	1,830	1,821
Monthly Subscriber Fee if buy	170									
Monthly Subscriber Fee if rent	200									
Decoder Deposit	500	550	605	000	732	781	854	922	878	1038
Decoder rental	30									
Assume $0% rent and $0% buy -										
Revenues from rental subscribers:										
Monthly rate at $170, plus inflation	$170	$170	$187	$206	$226	$244	$264	$285	$303	$320
Monthly cash flow @ sel. 40% (000's)	$4,395	$55,986	$156,182	$262,638	$367,100	$450,426	$526,731	$805,414	$664,394	$717,138
Monthly rent at $30 (000's), incl. inflation	$2,180	$24,660	$68,904	$115,070	$161,056	$198,717	$231,840	$367,095	$280,987	$316,385
Total annual cash flow (000's)	$7,056	$60,556	$225,088	$378,607	$529,667	$649,143	$757,672	$872,500	$960,381	$1,033,623
Cost of decoder	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300
Total cost of decoders	($15,900)	($148,900)	($127,400)	($111,000)	($75,400)	($44,208)	($36,400)	($35,100)	($9,108)	($59,100)
Annual Cash Flow	($8,544)	($66,344)	$87,650	$266,707	$453,667	$604,843	$721,272	$837,408	$951,281	$1,024,423
Residual of rental @5X, less replcmnt.	$0	$0	$0	$0	$332,480					
NPV of CF & Rent Residual @15% in Yr.5	$550,074									
Residual of renta l@5X, less replcmnt.	$0	$0	$0	$0	$0	$472,268				
NPV of CF & Rent Residual @16% in Yr.6	$850,360									
Residual of rental @5X, less replcmnt.	$0	$0	$0	$0	$0	$0	$602,001			
NPV of CF & Rent Residual @16% in Yr.7	$1,143,674									
Revenues from purchase subs:										
Monthly sale of $170, plus inflation	$170	$170	$187	$206	$326	$244	$284	$265	$302	$320
Monthly cash flow @sel. 40%	$4,596	$55,095	$156,182	$282,638	$367,100	$50,426	$526,731	$605,414	$586,384	$717,138
Purchase of decoder @$1,000	$12,000	$113,000	$123,480	$123,324	$87,290	$53,754	$48,480	$47,651	$12,810	$13,447
Total annual cash flow	$16,808	$168,000	$270,682	$386,682	$454,380	$504,180	$672,211	$662,475	$679,204	$730,685
Cost of decoder	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300
Total cost of decoders	($15,600)	($148,990)	($127,400)	($111,600)	($75,400)	($44,200)	($38,400)	($35,100)	($9,100)	($8,100)

UIH vs Wharf

Decoder Rentals vs Sales

Annual Cash Flow	$1,298	$21,996	$152,282	$274,182	$378,880	$459,640	$635,811	$617,375	$870,104	$721,485
NPV of Cash Flow @15% in Yr.5	$483,052									
NPV of Cash Flow @16% in Yr.6	$881,814									
NPV of Cash Flow @18% in Yr. 7	$863,345									
Total NPV for Rent/Buy Combination										
NPV of CF and Rent Residual in Yr.5	$1,013,127									
NPV of CF and Rent Residual in Yr.6	$1,512,304									
NPV of CF and Rent Residual in Yr.7	$2,007,020									
Assume 100% rent and 0% buy										
Revenues from rental subscribers										
Monthly rate at $170, plus inflation	$170	$170	$187	$200	$220	$244	$264	$286	$302	$320
Monthly cash flow @ est 40%	$9,782	$111,792	$312,385	$826,276	$734,201	$900,851	$1,051,483	$1,210,820	$1,332,787	$1,434,278
Monthly rent at 830 (000s), incl. Inflation	$4,320	$40,320	$137,606	$231,730	$323,012	$387,434	$493,881	$534,100	$567,894	$632,769
Total annual cash flow	$14,112	$181,112	$450,173	$757,015	$1,068,113	$1,298,286	$1,515,343	$1,746,010	$1,820,782	$2,067,045
Cost of decoder	$1,308	$1,300	$1,300	$1,360	$1,300	$1,300	$1,300	$1,308	$1,300	$1,300
Total cost of decoders	($31,200)	($269,600)	($254,800)	($223,000)	($150,800)	($60,400)	($72,600)	($70,200)	($19,200)	($18,200)
Annual Cash Flow	($17,066)	($932,688)	$185,375	$833,415	$807,313	$1,209,000	$1,442,643	$1,074,818	$1,602,582	$2,048,845
Residual of rental @5X, less replcmnt	$0	$0	$0	$0	$805,381					
NPV of CF & Rent Residual @ 16% in Yr.6	$1,100,140									
Residual of rental @ 5X, less replcmnt	$0	$0	$0	$0	$0	$844,672				
NPV of CF & Rent Residual @ 16% in Yr.6	$1,700,770									
Residual of rental @5X, less replcmnt	$0	$0	$0	$0	$0	$0	$1,204,003			
NPV of CF & Rent Residual @ 15% in Yr.7	$2,287,340									

Advantage of 100% Decoder Rent vs Rent/Buy Combination

(in 000's)	HK35	US$@7.74
Advantage in 5-yr period	$87,022	$11,343
Advantage in 6-yr period	$180,476	$24,351
Advantage in 7-yr period	$286,328	$38,218
Average Advantage (000's) of 180% Rent	$185,275	$23,837

Cost Savings for Set-Top Box Purchasers

The effect of the price reduction in set-top boxes was determined by comparing the net present value of the annual costs of the set-top boxes at $HK1,300 during the 10-year projection to the net present value at $HK800. The financial effect of the lower prices for set-top boxes was a minimum US$42,000,000, as shown on the following.

If I were to take into account cost savings from the elimination of the use of "smart cards," the resulting savings would be even higher, considering the cost of the smart cards and the need to periodically replace them, as well as the potential loss of revenues due to unauthorized reception and penetration decreases.

UIH vs Wharf
Damage Calculation

Set-top Box Purchases

Exhibit E

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
No. of Decoders Each year (Note A)	$5,000	201,250	199,750	150,000	141,250	86,260	73,750	77,600	20,000	21,260
Decoders (HK$ million) @ HK$1300 per unit	$5	262	250	195	184	112	96	101	26	28
Decoders (HK$)	$4,500,000	251,625,000	258,375,000	195,000,000	183,625,000	112,125,000	95,875,000	100,750,000	26,000,000	27,625,000
@$1300 per Unit Purchased	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300
NPV of Decoder costs @12.5%	$841,055,231									
Decoders (HKR) million) @HK$000 per unit	$62	$161	$159	$120	$113	$69	$59	$62	$16	$17
Decoders (HK$)	$52,000,000	$161,000,000	$159,000,000	$120,000,000	$113,000,000	$69,000,000	$59,000,000	$62,000,000	$18,000,000	$17,000,000
@$000 per Unit Purchased	$800	$800	$800	$800	$800	$800	$800	$800	$800	$800
NPV of Decoder costs @12.5%	$517,672,450									
Cost Savings on Purchase of Set-Top Boxes	$323,482,781									
Cost Savings on Set--Top Boxes in US$$	$41,783,641									

Note A - No. of Decoders taken from detailed "Assumptions" of financial model in Financing Memorandum of August 1993

Other Cost Savings and/or Value-Enhancing Contributions by UIH

There were other cost savings and/or value-enhancing contributions by UIH during the subject period that had the net effect of adding value to the system, although they are not as precisely identified and quantified as the preceding items. The additional items that contributed to the unjust enrichment are itemized in the Complaint by UIH, et al, and those not addressed above are presented below.

- Redesign microwave from 29 Ghz to 12.5 Ghz
- Eliminate use of "smart cards"
- Contributions to the franchise application
- Providing senior management
- Hiring senior management and engineering staff
- Negotiate with equipment vendors
- Contributions to the 8/93 business plan
- Interface with international bankers
- Redesign SMATV to 8 hubs
- Programming advice
- Other improvements in network design
- Cost savings and enhancements to MIS
- Ongoing knowledge and assistance

The alternative cost for the above contributions would be $US5-$US10 million when considering the professional time, administrative expenses and alternative fees and costs of outside parties. In addition, each of the above contributions led toward the system's initiation, development and improvement and subsequently in the enhanced value of the system.

Appendix

Qualifications of MTA-EMCI

Qualifications of Malarkey-Taylor Associates, Inc. (MTA)

Malarkey-Taylor Associates, Inc. ("MTA") is the world's most experienced consulting firm specializing in cable communications systems and related technologies. Since 1966 we have fulfilled the requirements of hundreds of clients in the cable television, broadcasting, microwave, cellular and paging industries; the financial and investment communities; and the public sector.

The Company was founded in 1966 by Martin F. Malarkey and Archer S. Taylor as a cable television consulting firm. Both Mr. Malarkey and Mr. Taylor had already established their reputations as pioneers and successful operators in the field of cable. Mr. Malarkey built and developed one of the first commercial community antenna television (CATV) systems in the United States in Pottsville, Pennsylvania in 1949. Mr. Taylor shared in building the first cable television system in the State of Montana in 1953. Mr. Taylor had served previously as a professional consulting engineer for the radio and television broadcast industry from 1944. The National Cable Television Association ("NCTA") was founded by Mr. Malarkey in 1951, and he was President of the Association from 1951 to 1956. Mr. Taylor was Vice-President of NCTA for one year and a member of the Board of Directors for six years. Both founders have served on many industry committees.

Our services have been utilized by decision level management in all parts of the globe. These services encompass:

- Appraisal
- Asset Valuation
- Due Diligence Review
- Engineering Planning & Analysis
- Construction Supervision

- Expert Testimony
- Franchising & Refranchising
- Investment Services
- Research & Marketing
- Regulator Analysis and Assistance
- Strategic Planning & Management

The diversity of our worldwide client roster and the fact that our clients return to us time and again attest to the long-standing reputation for objectivity and credibility our firm has achieved and consistently maintained.

MTA's long term leadership is attributed to an experienced, multi-disciplinary team of professionals who combine academic training with many years of practical experience.

The MTA staff of approximately twenty-five people is organized into five principal groups. These are:

- Financial Services
- Market Analysts and Research
- Engineering
- International
- Economic Management Consultants International, Inc. ("EMCI")

The Financial Services group performs independent fair market appraisals, purchase price allocations, due diligence reviews, financial modelling and sensitivity analyses, as well as expert testimony.

The Market Analysis and Research group does economic analyses of overbuilds, customer satisfaction surveys, market research surveys, feasibility studies, and contributes to due diligence reviews.

The Engineering group provides cost analyses, technical valuations of products and systems, analysis of future technologies, technical due diligence reviews and expert testimony.

Malarkey-Taylor International provides the focus for our world-wide consulting service in Europe, Asia, Africa, Australia, South America, and the Middle East.

EMCI provides cellular telephones and radio paging consulting, as well as publishing special and periodic industry surveys, statistical summaries and analyses.

MTA is a member of the NCTA, the California Cable Television Association (CCTA), the Pennsylvania Cable Television Association (PCTA), the Cable Television Administration and Marketing Association (CTAM), the Cable Television Association of England, the National Electrical Safety Code (NESC) and Society of Cable Television Engineers (SCTE).

MTA maintains offices in Washington, D.C. London and Paris.

Qualifications of Robert M. Jones, President, MTA

EXPERIENCE

Malarkey-Taylor Associates, Inc., Washington, DC, 1978-present, President, 1988-present; Executive Vice President, 1985-87; Vice President-Finance, 1978-84-

Responsible for the overall planning and management of all consulting activities, including hiring, training and evaluation of staff of forty. Consulting activities include domestic and international projects involving financial, technical, marketing, research and investment aspects of telecommunications, especially cable television. Personal experience includes analysis of hundreds of cable television systems, preparation of financial models, preparation and evaluation of franchise applications, preparation of feasibility studies and due diligence reports, and testimony as expert witness in cable television matters.

7th Signal Command, U.S. Army, Ft. Richie, MD, 1977-78, Chief of Internal Review (Civilian).

Responsible for audit and management assistance to approximately 150 telecommunications facilities at U.S. Army installations in the United States, Puerto Rico and Panama. Included the planning and management of an annual review program and the direction of a staff of seven auditors.

U.S. Renegotiation Board, Washington, DC, 1975-76, Supervisory Accountant-

Responsible for review and analysis of reports provided by Government contractors to determine potential excess profits and level of compliance. Included research of industry financial characteristics and onsite visits to study contractor operations.

Malarkey-Taylor Associates, Inc., Washington, DC, 1972-75, Financial Analyst-

Responsible for financial analysis involved in projections, evaluations, rate cases, appraisals, franchising and research projects. Prepared internal tax returns and financial statements.

U.S. General Accounting Office, Washington DC, 1968-69 and 1971-72 (Military absence during 1969-70), Supervisory Auditor-

Responsible for preparation, performance and reporting for various audits of Government contractors and Executive agencies.

EDUCATION

M.A. in Accounting, 1968, University of Missouri, Columbia, MO; Graduate Research and Teaching Assistant
B.B.A. in Accounting, 1966, Texas Tech University, Lubbock, TX, Dean's List, Honorary Societies

PROFESSIONAL DESIGNATIONS/MEMBERSHIPS
Certified Public Accountant, Maryland and Texas
Accredited Member, American Society of Appraisers
Member, American Institute of Certified Public Accountants

SELECTED SPEECHES AND PANEL PRESENTATIONS
"Financial Implications of Business Strategies" speech at Cable Television Conference by Frost & Sullivan Associates in September 1994.
"Effect of Rate Re-regulation on Cable TV Operators" speech/panel at Prentice Hall conference on cable television in 1993.
"Application of Cost of Service Showings for Cable TV Operators" speech at Annual Meeting of Maryland/Delaware District of Columbia Cable Association in 1993.

"Property Tax Valuation Issues" speech/panel at Cable Television Tax Professionals Institute Annual Meeting in 1992.
"Valuation Trends and Tax Issues in Cable Television" speech/panel at Atlantic City Cable Show in 1987.
"The State of the Cable Television Industry" luncheon speech at Missouri Cable Television Association Annual Meeting in 1986.
"Depreciation and Amortization Issues in Cable Television Appraisals" speech/panel at Paul Kagan Conference on Cable TV Values in 1985.
"Valuation Issues in Cable Television" speech at Women in Cable Meeting, Washington, DC Chapter in 1985.
"Steps Toward Successful Refranchising" speech at Texas Show sponsored by Texas Cable Television Association in 1982.

Miscellaneous interviews and quotes in Cablevision, Television Business, and other trade press magazines; regular articles in MTA/EMCI REVIEW published by Malarkey-Taylor/EMCI.

LITIGATION TESTIMONY

Note: Dates are approximate

Federal Trade Commission vs Digital Interactive Associates, Inc. et al
U.S. District Court, Denver, Colorado
Deposition 4/26/95; Court testimony, 4/28/95

Jean Raymer Baum vs Robert Baum
Superior Court of New Jersey
Chancery Division, Family Part, Bergen County
Deposition, 6/30/94

Northwest Indiana Telephone Company vs Internal Revenue Service
U.S. Tax Court, Washington, DC
Court testimony, 6/16/94

Rainwater vs Rainwater
Virginia State Court (Fairfax County, VA)
Court testimony, 9/23/93

John W. Davidson, et al vs Edisto Beach Cable TV, Inc., Douglas E. David, et al
Court of Common Pleas, State of South Carolina
Deposition, 5/17/93

James T. Parkinson, III et al vs First Carolina Communications, Inc., et al
Superior Court Division, North Carolina
Deposition, 3/31/93

Robert C. Wall, et al vs Gwinnett County, Georgia, et al
United States District Court of Northern District of Georgia
Deposition, 9/10/92

Pacific Federal Communications, Inc. vs County of Yolo, California
Superior Court of the State of California (Sacramento County)
Deposition, 1/30-31/92; Trial Testimony, 4/28-29/92

APPENDIX Y

EXCERPT FROM DIRECT EXAMINATION OF W. ELSNER (APLT. APP. 2422-25; 459:02-462:01)

Excerpt from Direct Examination of W. Elsner
(Aplt. App. 2422-25; 459:02-462:01)

Q (by Mr. Chase) Exhibit 531, are you generally familiar with this document?

A Generally is probably a good word; not the details or specifically, but generally familiar, yes.

Q Were you aware on October 8th when you met with Mr. Ng that your company had signed this document?

A Yes, I was.

Q Okay. What did you understand this document was all about?

A I first heard about this document when I received a call from Mike Fries, who is our Senior Vice-president in charge of Development, who was working with Wharf putting the big together, and this was how I first heard that instead of us listed as an owner at that date, we were going to have the right to own, and that Wharf still needed to show that they had the technical and cable television expertise to support their building this business. So this was a document that was supposed to go in the franchise application that proved to the franchising authorities that Wharf had the required cable television expertise to be successful.

Q All right. Now, did you understand that UIH had any commitment under this without being a shareholder?

A No, this was never supposed to rule or be an operative document, stand alone in and of itself. It was supposed to be what we did as an accommodation to them to commit to provide resources so that they could show they had the cable television expertise.

Q All right. For a moment, let me ask you to assume that away and assume that it was fully operative and effective the

moment it was signed. According to its terms, when would be the first time UIH would have been obligated to provide any services under this technical cooperation agreement?

A At the time the license was awarded.

Q And that was June 1, 1993?

A Close to there. I mean, I think it was right then.

Q Okay. And I guess maybe this is a dead give away where it says license, 6-93. Is that your memory?

A Yeah, I'd tell you June, whether it was the 1st or the 2nd, I mean, I don't know that I know that date.

Q And the services that you described a few moments ago when you committed your company, for the most part, when were those services provided?

A Immediately after the October 8, 1992 meeting. We, you know, acted on that that day. So those would have started to have been provided on October 8th.

Q So did these services have anything in the world to do with the technical cooperation agreement?

A No.

Q Did the technical cooperation agreement even get mentioned in the context of your meeting with Mr. Ng?

A No, it didn't.

Q Did UIH ever send a bill under the technical cooperation agreement?

A No, it didn't.

Q Did UIH ever get paid under the technical cooperation agreement?

A No, it didn't.

Q To your knowledge, was the technical cooperation agreement ever used for anything?

A It was included, to my knowledge, in the franchise application, but that was the extent of it.

Q Now, let me ask you a few more questions about it.

Who was the technical cooperation between?

A Wharf Cable, Limited and United International Holdings, Inc.

Q All right. Let me show you a chart that I used in my opening statement. I'm going to ask you if you can come over here and use this mike for a moment, and I'm just going to hold this.

All right, so it was between UIH and Wharf Cable, Limited?

A That's correct.

Q All right. Now, were these parties parties to the agreement?

A No, they weren't.

APPENDIX Z

EXCERPT FROM DIRECT EXAMINATION OF P. DUFFY (APLT. APP. 2939-43; 972:20-976:24)

Excerpt from Direct Dxamination of P. Duffy
(Aplt. App. 2939-43; 972:20-976:24)

Q What did you think yourself about the effect of Wharf/NYNEX losing the cellular bid on the prospects of Wharf winning the cable tv telecommunications bid?

A Well, I'm an eternal optimist and, you know, I felt that there was some positive elements to that. That given the Hong Kong government's pension for fairness, I felt that the fact that we had not won the cellular bid, that government would probably be more kindly disposed toward awarding us the cable and telecoms bid. So, I viewed it--sure, I was disappointed that we didn't win the cellular bid, but I thought that, okay, at least that enhances our viability regarding the cable and telecoms.

Q So, what did you think the chances were of going forward for Wharf to win the cable tv telecommunications bid?

A Well, I won a steak dinner. I bet that we would win it and we did.

Q So, you were right?

A I was right; I ate the steak.

Q All right. Let's move forward a little bit into August of 1992. This is Exhibit 323. This is to Farina, a copy to Paul Duffy, from Stephen Ng and it encloses this letter to Mr. Farina from Mr. Ng that says in the first paragraph--do you have it there?

A Yes, I do.

Q It says, "Earlier this week, the Hong Kong government issued a guidance note and invited proposals to build and operate a subscription telephone service in Hong Kong. Proposals are to be submitted on or before 30 September 1992 and it is intended that a license will be awarded by January 1993." What does this mean?

A Well, basically, Stephen was simply bringing Joe Farina up to date regarding where this particular project was, pointing out that the government had issued the guidance notes, and that the license ultimately would be awarded during early 1993.

Q What effect did the issuance of this guidance note have on the cable tv telecommunications bid in Hong Kong?

A. Well, it had multiple implications. Number one, we needed to accelerate the process of developing a binding agreement with regard to potential shareholder issues and we needed to accelerate the approval process at NYNEX. We needed to start to turn up the gain to get, you know, this waterfall effect back in motion again to get the people in New York ready to approve the investment.

Q When you say turn up the gain, does that mean--

A Well, you know, redouble our efforts a little bit.

Q Working harder, redouble your efforts?

A Yes, exactly.

Q Let me go back. There's something I forgot to ask you earlier. That was on the meetings in Hong Kong with the senior people from NYNEX. Do you recall a meeting in Singapore in early June involving NYNEX people?

A Yes, I do.

Q Do you recall who was there?

A It was either Ferguson or Salerno, myself, Stephen Ng, and I think that was it.

Q Was there anybody there from UIH? Do you recall Mark Schneider being there?

A You know, he might have been. I'm not sure. I'm not sure.

Q Do you recall anybody from UIH being there?

A I only had very few meetings with UIH. I didn't get to know the UIH people very well.

Q Would it surprise you if somebody from UIH was at the meeting in Singapore?

A No, no. I wouldn't be surprised.

Q Did you meet Mark Schneider along the way?

A You know, sometimes, I say yes and sometimes I say no. I don't really remember. I think I did. I think I did.

Q Okay. And, it's possible you met him at this meeting in Singapore?

A It's possible, yes.

Q Excuse me a minute. We're getting short on time and I'm trying to figure out what--how can we speed things along. Let me show you this document called NYNEX Network Systems Company, Asia-Pacific discussion paper, dated August 9, 1992.

A 1024?

Q I'm at--on Page 1.

A Yeah.

Q The Section 1.0?

A Oh, yes, general. Yeah, uh-huh.

Q Where it says NNS, that's NYNEX Network Systems?

A Network Systems, yeah.

Q "NNS has secured the opportunity to participate in a powerful consortium bidding for the cable tv license in Hong Kong." Do you see that?

A Yes, I do.

Q What was this discussion paper?

A Again, this was another effort on our part to continue to update our senior management in New York about where this was going and to summarize, if you will, the project and to make sure that they understood exactly what this thing was all about.

Q Was this part of the waterfall effect?

A Yeah, more paper.

Q The first sentence there of Section 1.0 says, "NYNEX Network Systems has secured the opportunity to participate in a powerful consortium bidding for a cable tv license in Hong Kong."

A Right.

Q At this point in time, did NYNEX have a right to invest in this project?

A No.

Q Did you have an option to invest in this project?

A No.

APPENDIX AA

EXCERPT FROM DIRECT EXAMINATION OF M. SCHNEIDER (APLT. APP. 3183-86; 1216:22-1219:22)

Excerpt from Direct Examination of M. Schneider
(Aplt. App. 3183-86; 1216:22-1219:22)

Q All right. Now, first of all, on the line to take with staff, Hong Kong government, et cetera, it starts out by saying, "Wharf has reviewed the ownership issue with its strategic partners and agreed not to introduce any new i.e. non-Wharf shareholders at least until after service launch." Do you see that?

A I do see that.

Q Now, had Mr. Ng reviewed this issue with you and had you agreed not to be introduced as a shareholder until after service launch?

A No, I had not. And, he had not reviewed that with me.

Q All right. Now, if Mr. Ng had a timing issue, would it have been okay with you to come in as a shareholder after service launch?

A Yes.

Q Okay. Would it have been okay with you to put the issue of your right to own shares on the back burner until Whart got around to it?

A No.

Q And, was that raised with you that you should put the issue on the back burner or until after service launch whether you will own shares?

A That was never raised at that point whether we'd own shares. What I think he said--I don't think he told me any of this until much later. First, he started saying, well, we shouldn't formally announce our ownership situation until after the award. He started saying that sometime further into the spring. I don't know if there are documents to that effect or not, but that's my recollection. Then, later, after the license

award, he started pushing for this, well, let's go ahead and formalize after the service launch. And, if he ever did mention this, I would have told him it would have been unacceptable to wait until service launch because that was many months off at this point.

Q Okay. Now, on our chart here just so we can orient everyone, the license--excuse me one second. The license is granted on June 1993 and the project is launched at the end--launch phase up there at the beginning of November/end of October 1993. Is that consistent with your memory?

A Yes, it is.

Q All right. Now, go back to this line to take with the staff, Hong Kong government, and I'm going to ask you about the last sentence of that particular part of it. It says, "NYNEX and UIH will continue to give full support to the application and the implementation of the project under the Technical Cooperation Agreements." Do you see that?

A I do.

Q Was that something that you agreed to with Mr. Ng at the time of this lines to take memo?

A I'm afraid I don't understand the question.

Q Did you agree with Mr. Ng that you would continue to support the project under the Technical Corporation Agreement?

A Not under the Technical Cooperation Agreement, but under our more general understanding.

Q Had you--

A Technical Cooperation Agreement, I don't think anyone ever looked at it again after the September period.

Q Was there any discussion with Mr. Ng around this January 1993 time frame about putting the TCA, the Technical Cooperation Agreement, into effect?

A No, none.

Q To your best recollection, when did the discussions first happen about putting the TCA into effect?

A At a dinner with Bill Elsner and myself in Los Angeles in December of that year.

Q At the end of 1993?

A At the end of 1993, yeah.

Q Okay. Now, let me take you up to the top part of this where it says, "Lines to take with UIH." Do you see that?

A Yes, I do.

Q All right. Now, it says, first of all, "NYNEX continues to be"--the editing is--"to be enthusiastic about the project, but has decided not to invest in the ownership of Wharf Cable at this stage." Do you see that?

A I do.

APPENDIX AB

EXCERPT FROM CROSS-EXAMINATION OF D. D'OTTAVIO (APLT. APP. 5491-5494; 3312:01-3315:06)

Excerpt from Cross-Examination of D. D'Ottavio
(Aplt. App. 5491-5494; 3312:01-3315:06)

CROSS-EXAMINATION

BY MR. TULLY:

Q Good afternoon, Mr. D'Ottavio. My name is Martin Tully. I'm one of the attorneys who represent the defendants in this case. I'd like to ask you some questions in the remaining ten minutes we have.

First of all, I believe you still have in front of you the letter that on your direct examination you spent a lot of time going over, and that was Exhibit 258. Can you find that, sir? It's in the materials that Mr. Wilson provided to you.

Let's just talk about the subject if you can't find the document.

A I've got it.

Q Okay. This is the minutes from the June 13, 1992 meeting between UIH representatives and Wharf representatives. Do you recall that, sir?

A Yes, I do.

Q And at this meeting, you went through this in a lot of detail and you were asked about advice that UIH gave to Wharf at this meeting regarding the frequency that was to be used for the microwave system. This is the 29 gigahertz versus 12 gigahertz issue. Do you recall that, sir?

A Yes, I do.

Q And that was something that UIH was advising Wharf on at this meeting?

A We took the position on it, yes.

Q Sure. And you gave them your opinions as to what you thought the right frequency would be?

A Yeah, it was actually 2.5 gigahertz, by the way.

Q Okay. But in any event, you were recommending something lower than 29?

A That's correct.

Q Okay. And also at this meeting, you talked about sharing your views, UIH's views, on the sharing of access with satellite services; right?

A We had discussions about sharing wiring within buildings.

Q And you gave Wharf your opinions on that at this June 13, 1992 meeting?

A Yes, we did.

Q And you also talked about SmartCards at the meeting?

A Yes, we did.

Q And you gave Wharf your views on SmartCards, whether they were good, bad or ugly; right?

A That's correct.

Q Okay. And you also talked about your firm belief that baseband was the best decoder for the Wharf Cable project?

A Yes.

Q You told them a baseband decoder was the way they should go?

A Yes.

Q Okay. And you also said that--you gave them some views on programming and staffing requirements and a number of other subjects that you covered early this morning and yesterday?

A I'm sorry, is that a question?

Q Yes. You covered all these things at the meeting?

A Yes, we did.

Q And you gave Wharf your views on it; right?

A That's correct.

Q Now, this was--you considered this to be valuable advice that you were giving Wharf at this meeting; right, sir?

A I'd say it's valuable advice. I don't think it was real valuable advice.

Q Well, you were giving them a lot of advice as to how to run their cable operation; right?

A We were giving them a very top side evaluation of what we saw in their business plans.

Q Okay. Now, Mr. D'Ottavio, as of June 13, 1992, UIH had no right to invest in the Wharf Cable franchise, did it?

A We were invited there to take a look at their plans and to discuss with Stephen the possibility of taking an investment in the Hong Kong franchise.

Q Okay. I'll repeat my question, sir. As of the June 13, 1992 meeting, UIH had no right to invest in the Wharf Cable project, did they?

A No, we didn't.

Q And there was no agreement reached at that meeting for any right to invest, was there?

A No, there wasn't.

EXCERPT FROM
DIRECT EXAMINATION OF E. FUNG
(APLT. APP. 6667-70; 4489:04-4492:23)

Excerpt from Direct Examination of E. Fung
(Aplt. App. 6667-70; 4489:04-4492:23)

Q Now, after the bid document went in on September 30 with this language that we've just looked at--and, let's make sure. This document on ownership structure on Page 5, do you have that?

A Yes.

Q Now, is this the language that you showed to Mr. Van Demark for NYNEX and got his approval?

A Yes, this is the same document.

Q And, is this the language that you showed to either Moss or Pittman from UIH and got their approval?

A Yes, it is.

Q Okay. And, this ended up in the bid document, right?

A Correct.

Q Now, did anybody from--and the bid document was in a document--the final bid document, do you know if it was sent to UIH and NYNEX?

A I believe there was a copy that was sent. Yeah, we made a lot of photocopies afterwards.

Q Okay. Did anybody from UIH ever complain to you about this language in the bid document?

A No.

Q Mr. Fries didn't complain?

A No.

Q Ms. Sonjia Norman didn't complain?

A No.

Q What about Mr. Mark Schneider?

A No.

Q How about Mr. Elsner?

A No.

Q How about Mr. Pittman?

A No.

Q How about Mr. Moss?

A No.

W What about anybody from NYNEX? Did anybody from NYNEX ever complain about this language in the bid document?

A No, it was accepted.

Q What about Mr.--not Mr. Oswald?

A No.

Q Or Mr. Van Demark?

A Hun-uh.

Q Or Mr. Duffy?

A No.

Q Okay. I think we can leave September behind and move into October and our pace will speed up. Look at Exhibit 649, please. Do you have that?

A Yes.

Q 649 is a memo from you to Mr. Pittman of UIH and Mr. Van Demark from NYNEX; correct?

A Correct.

Q Copies to some people from Wharf. It's dated October 23, 1992. Did you write this memo?

A Yes, I did.

Q And, sent it to Mr. Pittman and Van Demark?

A Yes.

Q The first paragraph says, "I thought it would be helpful for each of us to receive a summary of our discussions regarding shareholder issues yesterday. We are agreed to proceed as follows." Then, there's a bullet that says, "Prepare a negotiated, but unsigned shareholder's agreement by November 30 suitable for presentation to NYNEX board." Was that your plan at the time?

A Yes, it as.

Q At the end of the first bullet, it says, "We will dispense with the MOU going forward. Tim informs me that the new draft will be ready by early next week." What did that mean?

A Remember that we had been looking at both--Tim had called it a letter of intent, but we had called it an MOU and also--a non-binding MOU and also a shareholder's agreement and this basically said, look, it doesn't make sense to keep going forward with an MOU. We might as well just go and draft a final agreement at the same time.

Q This shareholder's agreement that you're talking about here in the first paragraph, was that--how many parties were there to be to that shareholder's agreement?

A Three.

Q And, the parties were to be?

A NYNEX, UIH, and Wharf.

Q Okay. Look at Exhibit 652.

A Uh-huh.

Q This is not in the jury book. Exhibit 652 is a memo of--does that say October 23 up there in the upper right hand corner?

A Yes.

Q And, it's from you to Stephen Ng, re: partnership implementation and documentation issues. What was, in a nutshell very briefly, the purpose of this memo that you wrote to Mr. Stephen Ng?

A It basically talks about what we just had talked about and gives some views as to what issues are outstanding.

Q Now, in Bullet 1, you say, "Prepare negotiated, unsigned version of shareholder's agreement by November 30." That's what you talked about in the prior memo to the other people, right?

A That's right.

APPENDIX AD

EXCERPT FROM THE DEPOSITION OF S. NORMAN (APLT. APP. 8109-12; 5890:25-5893:22)

Excerpt from the Deposition of S. Norman
(Aplt. App. 8109-12; 5890:25-5893:22)

Q This signed Technical Cooperation Agreement, Exhibit 522 dated September 25, 1992 provides for UIH being paid money for its services under this agreement, does it not?

A It says that in this agreement.

Q Indeed, it says on Page 8, Section 8, there is a section entitled fees and payment; correct?

A That is what it says, yes.

Q That is what the contract says, correct?

A That is what the contract says, yes.

Q Would you mark this as 523."

MR. MUNSON: And, this is Trial Exhibit 704 in the binder at Tab 16.

Q "Ms. Norman, you have Exhibit 5213. Would you take a moment to review that and let me know after you've had a chance to see it?

A Ready.

Q Are you ready?

A Ready.

Q Thank you. Exhibit 523, at the top of the page in capital letters, it says, 'WHARF/NYNEX/UIH TELECOM PROJECT'. Do you see that?

A I see that.

Q It is dated November 4, 1992 and it appears to be addressed to Mr. Bellis, Mr. Pittman, Mr. Fung, and Ms. Norman. That is you, Ms. Norman; correct?

A That is me.

Q The last sentence, or last paragraph rather, of this letter reads, 'I would like to add this idea to our agenda of things we need to discuss when next we meet. I would like to suggest the second half of November as the time for us to concentrate on developing the shareholder's agreement.' Do you see that?

A I see that.

Q You received this letter on about--on or about November 4, 1992, correct?

A I don't recall specifically receiving it, but it is addressed to me at that time, and I have no reason to believe I did not receive it on or about that time.

Q This maximum tax benefit idea that is expressed in the first paragraph of the letter, in the last paragraph of the letter, Mr. Van Demark suggests 'adding that to an agenda of stuff when next we meet.' Do you recall if that was discussed?

A I don't recall it.

Q He also says, Mr. Van Demark, in the last paragraph of Exhibit 523, 'I would like to suggest the second half of November as a time for us to concentrate on developing the shareholder's agreement.' Do you see that?

A I see that.

Q Do you know if by that he was referring to a shareholder's agreement between and among Wharf, NYNEX and UIH, if you know?

A I don't know what he was attending or referring to when he wrote that.

Q There were discussions, were there not, in November, 1992, about the draft shareholder agreement between and among Wharf, NYNEX and UIH?

A I believe so. I cannot remember specific dates.

Q You have no reason to believe that they were not, do you?

A No, I have no reason to believe they weren't.

Q Would you mark this as Exhibit 524, please?"

MR. MUNSON: And this is Trial Exhibit 707 at Tab 17 in the--in the jury binder.

Q "This is sort of a long document, I guess.

A It is a long document.

Q Do you want to take a minute to review it?

A Not really. Maybe you should ask me some questions. It doesn't seem to me that I need to review it.

Q Fair enough. Exhibit 524 is a document. On the first page at the top it says, 'Dated,' and then there is a bracket and a blank and another bracket, 'January, 1993,' correct?

A Correct.

APPENDIX AE

EXCERPT FROM DIRECT EXAMINATION OF R. JONES (APLT. APP. 8301-8306; 6082:08-6087:25)

Excerpt from Direct Examination of R. Jones
(Aplt. App. 8301-8306; 6082:08-6087:25)

Q Okay. Now, the next thing we're going to ask you is how a baseband decoder works. Mr. Jones, what you just went through in terms of the valuation, is there anything different about that than what you've done in the several hundred valuations you do in your ordinary business?

A No. Sometimes, we don't go through the whole exercise. I mean, we do this everyday, valuations. So, we know what the risk-free rate is. We know, you know, what the risk premiums are and the betas and what the market is actually paying or expecting in terms of returns. So, it's not unusual that we would use certain discount rates without specifically going through the beta computation or the equity risk premium calculation for every valuation we do. But, it's the same discount rate, the same methodology, the same approach in all of them.

Q Okay. Now, you also did a valuation as of October 1992; is that right?

A Yes.

Q Now, your opinion there was that the lost value to UIH was $50 million, is that right?

A That's right.

Q All right. The bad news is I'm going to ask you a couple of questions about that. The good news is we're not going to talk through the whole methodology. I'm going to ask you generally did you apply the same general methodology to the October '92 that you used in March '94?

A Had the same general methodology with a couple of changes.

Q What were the variations that you used in October '92 as opposed to March '94?

A Well, in '92, if you recall, we did the weighted average thing with the 50/50 debt/equity. In '92, being earlier in the game with some additional risk associated with it, we used only a 40 per cent debt and 60 per cent equity. So, we used a different debt/equity ratio. Also, after computing the total value in Hong Kong dollars, but basically in computing the total value, I reduced it by 15 per cent to recognize certain additional risk and uncertainties at that time being right after the franchise, a long ways from having a system built, and some uncertainties associated at that time. So, I reduced it by 15 percent to take into account my opinion of what that factor would be.

Q And, that's what accounts for the 50 million as opposed to the 67 million in the March computation, those items you just mentioned?

A Well, that's part of it. I mean, we're using a different business plan and a different set of projections. So, those would affect it, as well. But, clearly, reducing it by 15 percent would make a significant difference to it.

Q The business plan you were using for the '92 projections, that's what went with the bid?

A Yes.

MR. CHASE: Okay. Now, I'd like to just move the admission of Exhibits 1621, 45, 46, and 47. These four exhibits parallel the four that we looked at on the March computation, but these are the October computation and I'd just like to move the admission into evidence.

THE WITNESS: I think you mean 1622 instead of 1621.

MR. CHASE: 1622, 45, 46, and 47.

THE COURT: Do you have the same objections?

MR. MUNSON: Yes, sir.

THE COURT: They're overruled. Thank you.

(Trial Exhibits 1622, 1645, 1646, and 1647 were received in evidence.)

MR. CHASE: Okay. And, if Ms. Hutchinson will distribute these, as well. I'm just going to put one of these up on the board and just--

(Pause.)

Q (by Mr. Chase) Do you have 1622 in front of you?

A Yes.

Q Okay. Generally, just tell us, please, what is reflected on Exhibit 1622 and that's--I don't think you need to come to the board, but this is the counterpart to the summary you had from March '94.

A Exhibit 1622 indicates the loss in value of UIH's share of the business as of October 1992.

Q All right. And, you used the same three methods?

A Yes, the same methods again except for the 15 per cent adjustment.

Q And then, you averaged the averages?

A Yes.

Q And, you came out with?

A 50 million.

Q Okay. UIH's share?

A Yes.

Q Now, let's talk about--before we go on to your other opinions, I want to talk about the idea of risk for a few minutes because that's something that you've mentioned on various

occasions. First of all, summarize for us for a moment--and then we'll go forward--how risk is factored into your computation?

A In a lot of different respects--

Q How was it factored in in this case?

A Again, it was factored in pretty much from the beginning in the assessment of the input to the models to determine if I felt those were too aggressive, too much risk, should be adjusted, something like that. So, in considering the elements in the projections, risk is considered at that point. Then, even through the whole process that we talked about earlier in determining a terminal value in that last year, we have to look at the multiple that's applied. We take into consideration risk that we feel might be appropriate at that time and that will affect where in that range of acceptable multiples we select a multiple. Then, the risk obviously is contained in the equity risk premium and the discount factor and in the reflection of the beta. In other words, how the cable industry stocks vary compare to the overall market. So, really, risk is taken into account at each stage of the game. Any particular business risk are either reflected in changes or considerations in the projections or as an added amount in the discount rate.

Q Was that done by you in this case?

A There was--I increased the business risk by one point in the discount and all those other risks were taken into account in this case.

Q All right. Now, I want to talk about some specific risks. First of all, did you view the Hong Kong project as a startup business?

A Yes and no.

Q Okay. I'm going to ask what you mean by yes and no. In fact, I will ask what you mean by that. What do you mean by yes and no?

A Okay. Sorry, I'm not being coy; that's true.

Q That's all right.

A Okay. Yes, it was a startup. There was not a cable system there and they were building a cable system where there was none before. So, it was a startup business. On the other hand, cable television is not a new and unproven technology nor the approach or the methodology. It was not unique or, you know, newly created. So, the industry, the approach, the business plan was not new. On the other hand, you know, as far as there being business there or not, yeah, it was a startup.

Q Okay. And, you've valued, I believe you testified, about at least 25 per cent of your previous appraisals has been beginning cable businesses?

A Yeah. Again, I don't know the exact percent, but that's an order of magnitude that we've done about that percentage of new or startup systems.

Q And, do you view those generally with the same yes and no kind of answer?

MR. MUNSON: Objection, Your Honor; lack of foundation.

THE COURT: Sustained.

APPENDIX AF

EXCERPT FROM CROSS-EXAMINATION OF R. JONES (APLT. APP. 8443-8450; 6224:04-6231:23)

Excerpt from Cross-Examination of R. Jones
(Aplt. App. 8443-8450; 6224:04-6231:23)

Q (by Mr. Munson) Mr. Jones, I take it that as--let's go back to the--when we were talking about the decoder sale price issue, what you said was that you just didn't take any other evidence into account. Do you remember that?

A Yes, I was given a set of assumptions, and asked to determine the cost savings.

Q Well, I take it the same thing pertains on this decoder rental versus sale opinion; that you just didn't take any other evidence in to account. Is that a fair statement?

A It was not needed or required for me to do what was requested for this exhibit.

Q Correct. And, thus, you didn't take any other evidence into account; is that correct?

MR. CHASE: Your Honor, I'm going to object. You know, he stated his opinion as being a mathematical thing, and now he's trying to make it something else.

THE COURT: Sustained.

Q (by Mr. Munson) Now, let me just ask you this last question on this, Mr. Jones. Your analysis is based on, as you said earlier, a starting point of 50 per cent sale and 50 per cent rental; correct?

A Yes.

Q Now, if that starting point changes somehow, the final number changes; correct?

A Assuming everything else, all the other relationships stay the same, then the math would work out to a different number.

Q I forgot to fill in this dollar advantage line here. The dollar advantage was 152; right?

A Yes.

Q On your first one. And then you corrected that to 24 million; right?

A Yes.

Q Now, all I'm trying to get at here is what we did before on the other one, which is if you change Number 1, 50 per cent sale, 50 per cent rent, that will change the $24 million figure; correct?

A One way or the other.

Q Right. So if you change Number 1, that changes the dollars; right?

A It should, but I haven't gone through the math and tested it. You would think that if you change some assumptions, it would change it, but I don't know.

Q Likewise, if you change Number 2, the 100 per cent rental figure, that will change the dollars in your dollar advantage number as well, won't it, all other things being equal?

A Most likely it would change. I don't know--

Q I'm not asking you to say how much.

MR. MUNSON: Okay. Your Honor, give me a minute again?

THE COURT: Yes, sir.

MR. MUNSON: In light of your rulings.

THE COURT: Right.

MR. MUNSON: And take a moment to figure out what I can not use.

(Pause.)

Q (by Mr. Munson) Mr. Jones, let's do this. I'm going to change topics here and switch over from the work you did on valuing the alleged work that UIH did to the work you did on valuing UIH's alleged option or ownership interest. You remember that you did some work in that area as well?

A Yes.

Q Now, you were aware that in this case UIH alleges an option to buy ten per cent of Wharf Cable; correct?

A I don't know if it's those exact words. I recall--

Q Well, do you recall--

A Again, I recall reading the--the Complaint and saw what it said in there.

Q Well, let's look at Tab 65 which is a copy of a part of the Amended Complaint. Do you have that in front of you?

A Yes.

Q Turn to the second page of that document, at paragraph 54. And paragraph 54 sub (1) of the Complaint alleges UIH had the option, but not the obligation, to purchase either directly or through UIH-Asia at least ten per cent of the capital stock of CNCL; do you see that?

A Yes.

Q Now, when you did your calculations in this case, you knew that UIH was claiming in this case that it had an option to invest; correct?

A I had read this Complaint, so I knew they were alleging that.

Q Now, what you valued, though was not the value of an option to buy ten per cent, instead you valued the ten per cent ownership; did you not?

A I valued a ten per cent economic interest of CNCL.

Q Exactly. So what you didn't value was an option to buy a ten per cent interest; correct?

A I valued the option as equivalent to the ownership interest.

Q So, again, what you didn't value was an option to buy ten per cent; correct?

MR. CHASE: I'll object, Your Honor. He just answered the question.

THE COURT: Overruled.

THE WITNESS: Not--not--well, again, I'll just have to restate it. I valued the option as equivalent--as--as equivalent of the ten per cent economic interest of CNCL.

Q (by Mr. Munson) Well, let me see if I can understand. You valued--what you did was to value a ten per cent ownership interest in the cable company; right?

A Yes.

Q Right? Okay. What you didn't do--

A Well, the equivalent of a ten per cent ownership interest.

Q Value of the equivalent of a ten per cent ownership interest. What you did not do was to separately value an option to acquire a ten per cent ownership interest; correct?

A I guess I didn't interpret it as--in quite that way. I--I was asked to, again, determine the ten per cent economic value of CNCL, understanding what was claimed in the Complaint.

Q Okay. So let me ask once again. What you didn't do was to separately value an option to buy ten per cent; correct?

A Maybe you can define option a little more clearly.

Q All right. Well, let's--let's do that. Look at--look at Tab Number 67. Tab Number 67 is an excerpt from this book called Options Pricing--by Gordon Gimmel, called Options

Pricing and International Prospectus, published by McGraw Hill Book Company; you see that?

A Yes.

Q And copyright 1993. That's just inside the cover--inside the cover. You want to take a look at this?

A Okay.

Q At Tab Number 67, there is a copy of page 3 of this book; do you see that? I mean, you can look at it either in the book or--or in the binder, whichever is more convenient.

The--on the book for a minute, is this a book that you've seen before?

A I don't recall having seen it.

Q Do you know who the author is?

A I'm not familiar with him.

Q Did--does it appear to be to you on your review of it based on your experience in the business world and evaluation world, does it appear to you to be a reasonable authoritative text?

MR. CHASE: Your Honor, I'm going to object to that. How can he possibly say looking at this book in the few seconds he's had?

THE COURT: Sustained.

Q (by Mr. Munson) Look at page 3, if you would, please.

A Okay.

Q In the--sort of in the middle of the page there is a--the definition entry; do you see that?

A Yes.

Q It says, "Definition. An option is a contract which confers the right but not the obligation to buy or sell an asset on a given

date at a pre-determined exercise price." Do you agree with that definition?

MR. CHASE: Your Honor, I'm going to object. I don't have any objection to him asking what he believes an option to be, but using a book that he's just seeing now for the first time and it's going to have text preceding and coming after this section, I think is unfair.

THE COURT: The objection's overruled. He's merely asked if he agrees with that definition.

THE WITNESS: For an option that's a stock option, traded in a market or something like that, then, you know, this is--appears to be a reasonable definition.

Q (by Mr. Munson) Is this a reasonable definition of an option in general?

A I think options can be defined fairly generally and it's probably used fairly generally. Basically an option is--is an option to buy--buy something in the--in the future.

Q It's the right to buy something in the future, isn't it?

A Right.

Q Without the obligation to buy it; correct?

A Well, there are various conditions on options, but the option is a right to buy something in the future.

Q Correct. And--and as you say, there can be lots of conditions on an option depending on how the option is written and what the circumstances are surrounding the option and the business transaction; correct?

A I--I don't know the--the specifics of what you're getting at, but--

Q I was just trying to agree with you.

A There are provisions on certain options. Other options are very--very generic.

APPENDIX AG

EXCERPT FROM REDIRECT EXAMINATION OF R. JONES (APLT. APP. 8518-8519; 6299:06-6300:24)

Excerpt from Redirect Examination of R. Jones
(Aplt. App. 8518-8519; 6299:06-6300:24)

Q And, have you had an opportunity to compare the discount rate that you used here to discount rates that you've used for other cable tv valuations?

MR. MUNSON: Objection, Your Honor; leading.

THE COURT: Sustained.

Q (by Mr. Chase) Have you drawn any comparisons of any kind on discount rates?

MR. MUNSON: Objection, Your Honor; leading. Objection, Your Honor; leading.

THE COURT: Overruled.

MR. CHASE: You lost that one.

MR. MUNSON: Well, you kept asking him. You faked me out.

THE WITNESS: Yes.

MR. CHASE: Okay.

Q (by Mr. Chase) And, what have you concluded from those comparisons; what, if anything?

A The discount rates that I've used are very similar to those that I've used in the past and those that I've seen in appraisals and transactions.

Q All right. Now, in this building of discount rate, have you reviewed the discount rate that you've actually used with the various sources that you took the information from?

MR. MUNSON: Objection, Your Honor; leading.

THE COURT: Sustained.

Q (by Mr. Chase) I'll skip that question. Let me go to one final area. When you talk about what UIH would have to contribute, is there anything in the financing memorandum or in the bid case that would indicate the answer to that question?

A In a total dollar amount or a ratio?

Q Ratio, total dollar; how would you do that using those documents?

A Well, basically, starting point would be their 10 per cent pro rata portion of the capital requirement and then the next step would be to look at the projections and figure out what the capital requirement expected to be was.

MR. CHASE: Okay. Give me one second here. I'll consult with my smarter, younger brother.

(Pause.)

MR. CHASE: Well, Mr. Jones, I have no further questions either. Thank you, sir.

THE COURT: All right. Mr. Jones, you may stand down. Thank you.

APPENDIX AH

EXCERPT FROM CROSS-EXAMINATION OF M. SEARS (APLT. APP. 8830-32; 6611:10-6613:21)

Excerpt from Cross-Examination of M. Sears
(Aplt. App. 8830-32; 6611:10-6613:21)

THE WITNESS: Lanny Huang was a relatively minor--I'm sorry, relatively junior member of the Wharf Cable team. She had no involvement with network applications and I don't--that wouldn't have been my opinion as far as network matters were concerned.

Q (by Mr. Wilson) So you would disagree, then, with May Fung who testified that Lanny Huang was about the third most important person in the programming team behind Thomas Tang and Yvonne Siu?

A I'm not familiar with May Fung's testimony, so I--I'm not in a position to comment.

Q That's not my question. My question is do you disagree with it?

A My recollection was, to repeat myself, was a relatively junior member of the team. I don't think I can say any more.

Q Well, now, we're going to--we're going to talk a little bit--little bit later on about what track, the right track or the wrong track that Wharf was on in terms of its cable system before UIH got involved. You would agree with me, though, that UIH help put Wharf's cable project on the right track; wouldn't you?

A No, I wouldn't.

Q Well, let's look at what Mr. Ng had to say at the time. Exhibit 1172. This is in the jury book. Oh, it's not? Well, that's odd.

A Sorry. I have 1172.

Q Yes. I'm sorry. If it's not in the jury book, my apologies, I thought it was in there.

Okay. You have 1172, Mr. Sears, right? All right, Mr. Sears, this is Mr. Ng's letter to the Mr. Schneider dated June 21st, 1993. Now, if we can imagine my time line up here which I didn't put back up in the interest of time, I guess, I'm pointing right here. June 1st, 1993. That's when you got your license; right?

A That was when it was formally awarded, yes, I think so.

Q Okay. And second paragraph here, Mr. Ng writes to Mr. Schneider, "We would also like to again extend our heartiest gratitude to yourselves for having assisted to put the project on the right track. UIH's contribution is helping to insure that Wharf Cable possesses the winning formula." That's what Mr. Ng wrote to Mr. Schneider; right?

A Yes, it appears so. Yes.

Q So you would just disagree with Mr. Ng that UIH put your project on the right track?

A You referred earlier, you asked me a question about whether they put he network or the cable TV network aspects on the right track and I disagreed with you.

Q Oh, so--

A And my--I don't know what Mr. Ng had in mind when he was talking about the winning formula or project being on the right track. I don't think it had any application in the area for which I had been responsible.

Q Well, we'll talk about that a little bit later on as well. Why don't you turn over to Exhibit 1243 which is another--another memo that we've seen before that reflects how Wharf felt about UIH at the time, as opposed to now. And this is 1243, August 11th, 1993, Mr. Fung to Mr. Ng. This is the--what we call the moral obligation memo, if you remember the time line. Do you have that in front of you?

A Yes, I see that. I haven't seen it before.

Q You have seen this before?

A I haven't seen it before.

APPENDIX AI

EXCERPT FROM PLAINTIFFS' CLOSING ARGUMENT (APLT. APP. 10160-68; 7941:01-7949:04)

Excerpt from Plaintiffs' Closing Argument
(Aplt. App. 10160-68; 7941:01-7949:04)

And you will have a jury instruction, Jury Instruction 7, that will tell you you don't have to have--you don't have to have any authority. The key is, do you have a parent authority to act on behalf of the corporation. And if you find that they did, that Stephen Ng did, then you find that the corporation is bound just as if he had all the authority and board resolutions in the world.

The next point I think is also extremely important. In determining--well, it's also got a typo in it, too, but I'm going to fix that now.

In determining the intent of the parties to be bound, you may consider only the parties that--this word answer should be action, I can write on this because it's my flip chart. May consider only the parties actions, statements--statement and writing. You should not consider any hidden or secret intentions of the parties. This is Jury Instruction 39. This is important because you can't have one party coming into Court saying I never intended to be bound, it was never my intent. I mean, they could say that, but secret intent, un-communicated intents to another party don't count. The only thing that counts are the actions, the statements and the writings. That's what determines it. If you've got a secret--if you shake somebody's hand and you've got a secret intent not to be bound, that doesn't count. That's what this--that's what this instruction is getting at.

Now, you've heard a lot about conditions in this case. And this--and you've heard the Defendants talk about conditions perceived. And I show you a chart about why we think that the conditions issue in its entirety is completely beside the point.

Now, you'll look and you'll see Jury Instruction 42. And according to Jury Instruction 42, you get to this issue of

condition if you find that there's a contract. And then if you find there's a contract, you determine whether there are conditions and you'll see in Jury Instruction 42 four conditions laid out there. Now, it's my understanding the Defendants want to talk about there were conditions to them making an offer and all kinds of things and they will talk to you about that, but this is the condition with respect to conditions perceived that if you have a contract and if there were conditions the issue is did the conditions happen or were the conditions excused?

And so let's say I'm dead wrong on what I told you before about the ten reasons to forget about the three party conditions, the five reasons on this, the five--let's suppose I'm dead wrong. And let's suppose you go into this thing and you say, okay, we think it's a contract. We think it was subject to conditions. And the next question you have to reach then is did these conditions happen or were they excused? And keep that word excused in mind because I want to talk about that here.

Conditions are excused if it would be a futile act to perform the conditions. It's a condition top me paying you that you go out and paint that building; it happens the building burned down the other day. It would become a futile act to try to paint the building. It became a futile act for me to pay you, too, so it's probably a silly example. But if it turns out that it's a futile act, the condition is excused.

Defendant failed to act in good faith by preventing or hindering the incurrence (sic) of the condition. Now, that--that is the man locking himself in the bathroom. And that is, okay, there's a condition here that I'll let you into the partnership if we have a Shareholders Agreement. But I'm never going to show up and do that Shareholders Agreement. I'm never going to get to the finality of it. I'm never going to sign the thing. Well, the condition may exist, but if you did not act in good faith and you prevent the condition and if you prevent the condition, then the condition is treated as if it occurred.

Another good example. You can come into my deal if I get board approval. But if you never take it to the board, you may find that that is not acting in good faith with respect to that condition and, therefore, the condition is treated as if it happened. It is excused.

And then the final excuse is if the Defendant repudiates the contract before the occurrence of the condition was due. And that's a perfect example in this case. It's a condition to UIH's right to invest in the project that it show 18 months funding capability. Well, in September, October, November, December, 1993, UIH is knocking on the door saying to Wharf, here's my money. We want in, count it. Count it so that we can satisfy this condition of 18 months funding capability. Well, Wharf doesn't want to count the money. And so what Wharf's done basically at that point in time is that they've repudiated the contract, they're not going to count the money, they're not going to act in good faith and the condition is treated as if it occurred. And that's the law according to this jury instruction.

Now, this is simply a definition of what's repudiation. That's words or conduct showing a clear and definite intention not to perform the contract. I think we got that pretty clearly in this case where you've got about four or five months of UIH trying to stuff the money into Wharf's hands and Wharf refusing to take the money, refusing to let UIH in.

On the contract damages, UIH is awarded the benefit of its bargain with Wharf. And that is the value of ten per cent of Wharf Cable's expected profit. And that takes you to the analysis that was done by Mr. Jones, the March 1994 analysis to say what was the value of Wharf's expected--ten per cent of Wharf's expected profits as of that point in time. And that would have been the valuations that Mr. Jones did, that was the second valuation and that was the $67 million valuation as of that date.

Now, keep in mind also, and I'll talk about this on damages, when we use these numbers, 50 million value, 67 million value, whatever, this is over and above the investment. So if UIH had to put 50 million into the project and the project, let's say it's got a value of 67, we mean 67 over and above the 50. So the 67 is the net figure. It would actually be if you're adding the two together, $117 million, minus the 50. So--so I just want to make sure that you understand that, that we don't subtract out the investment. The appraiser already does that. He figures the investment into the appraisal on the basis of how much cash would have to be contributed.

Now, I'm done with that chart, I think. A point was made to me that I'm about to get to. I'm going to end up in flip chart heaven. That's my idea of purgatory; life with endless flip charts. They just keep coming at you. Okay.

Now, let me talk about damages generally. And before I leave this subject, let me talk to you about the verdict form. I made a mistake before. Go back to the screen here for a second.

I told you that from our point of view the answer is yes except when you get to--oh, I can't leave contract without explaining this to you. Good thing I--see what happens to me after lunch?

In a contract case, the defendant has the burden of proving that the parties did not intend to be bound unless there was a writing. That's a--that's a defense that the Defendant actually has the burden of proof. And so Mr. Jentes will talk to you about whether he believes, I'm sure he does believe, and he's going to argue to you that you too should believe that the Defendant proved that this contract the parties did not intend to be bound without a writing. Well, they have to prove that.

And on the verdict form, you will see that in that portion, that's a defense. and the question is asked, "Did the Defendant prove that the parties had to have a writing?" And on that one,

my studied and neutral, objective recommendation is that you--that you press the no button.

And that--that same issue comes up in another context as well. At the end of the verdict form, Verdict Form 4, the one called controlling person liability, that's the--that's the issue as to whether Wharf Holdings controls Wharf Communications, Wharf Communications and Wharf Holdings control Stephen Ng. And a defense that the Defendants have on that one is a good faith defense. They're arguing that they acted in good faith in their control. And on the verdict form the question is asked, "Did they act in good faith?" And that's another place where we would--we would argue that the answer is no, but I just wanted to make it clear because I think this morning I said that from our perspective everything's yes except that one contract issue.

There's also issues, I'll give you an example here on this control person so you don't think I'm completely losing it. "Do you find that Wharf Holdings has proven that it acted in good faith and did not directly or indirectly induce Stephen Ng to violate the securities laws?" And you can see that I've checked no on that one. Now, there's a few questions on these controlling person liability forms where that would be the appropriate response if you find that there is control person liability.

I want to--I'm running out of time and I really want to talk about the damages issue in general here. You--you are fortunate in the fact that this is the most recent thing that's happened in the case. And so a lot of things I say are going to be very familiar to you and to the point that I may bore you. But I'll try not to and I'll try to move through this as quickly as I can.

There's some fundamental principals that we think govern the issue of damages in this case. The first and most fundamental principal of this whole case is UIH is not an

investor--I mean, UIH is not a consultant. Excuse me. The record should reflect I'm hitting myself in the head.

UIH is not a consultant, it is an investor. I don't know how many thousands of times it's been said from my knee, from the witness stand, from all over. There's really no dispute about that. They do not work by the hour. Every hour they spend working on a Wharf cable project or an Indonesian project or some other project is an hour they're not spending somewhere else. And so when Wharf comes and talks to you about just give them their salaries, just give them their out of pocket expenses, that's not the way UIH does business. That's not why UIH was here and you can't look at damages from that perspective.

You have to look at it the way Fung looked at it. And that's Exhibit 1260. UIH's contribution was made in the spirit of entrepreneurial partnership and justifies a form of compensation commensurate with the expected upside of the Wharf cable project. Fung understood it. Wharf understood it. UIH was an entrepreneur, it was there to invest, it was there for expected profits, it was there for the expected upside. And when you look at damages as to what UIH lost, UIH did not lose $86.50 per hour for Ms. Spangler's time or $286, I'm sorry. I didn't mean to do it that way. Or whatever it is. Did not lose that. What UIH loses is the ability of Ms. Spangler or Mr. Schneider or Mr. D'Ottavio or whoever it is to be able to go out and be in some other profit making enterprise. It's the profit of this enterprise that they lose.

APPENDIX AJ

MEMORANDUM FROM S. NG TO P. WOO, DATED JUNE 12, 1992 (ADD. 39; WC25052; EX. 249)

WHARF COMMUNICATIONS INVESTMENTS LIMITED

MEMORANDUM

TO: Mr. P.K.C. Woo

FROM: Stephen Ng

DATE: June 12, 1992

SUBJECT: NYNEX

I reported to you yesterday that Don Oswald has fed back to me positive signals from NYNEX subsequent to the recent visit by Bill Ferguson. NYNEX is now anxious to move forward to investigate more thoroughly the Wharf Cable project.

I advised Don that our cable TV business plan is somewhat out-of-date. We are currently reviewing the plan based on another round of market research as well as further brainstorming among the team with regard to future implementation issues. I said we will get a revised (and updated) business plan to NYNEX together with a new financial plan as soon as we can.

In the meantime, NYNEX has decided to send a small team to Hong Kong in the near future to prepare a "network pre-proposal" for NYNEX to assess, on a preliminary basis, the feasibility of a telecoms business plan. The team will comprise marketing as well as technical personnel.

In parallel, Wharf-NYNEX has agreed with Queen Mary Hospital to install within the hospital campus a broadband inter-building medical imaging network on a trial basis. Our target is to implement it in September. If successful, we will try to sell a territory-wide system to the Hospital Authority.

We are encouraged by the NYNEX response but we also appreciate that we still have some way to go before striking a

deal with NYNEX over cable TV/second network. Within Wharf Communications, we have already discussed the important issues for us to pay attention to in managing this relationship with NYNEX going forward. Emil Fung will prepare a discussion paper by the end of next week for discussion with yourself. Vince Lam, on the other hand, will be assigned to work with and take control of the telecoms business plan.

STEPHEN NG

APPENDIX AK

MEMORANDUM FROM E. FUNG TO S. NG, DATED JUNE 17, 1992 (ADD. 40-41; WC01154-55; EX. 258)

Wharf Communications

Investments Limited **Memo**

To: Stephen Ng Confidential

From: Emil Fung Date: June 17, 1992

RE: Notes from 13/6/92 Meeting with UIH

Franchising

What are the legislative/administrative conditions necessary for the relaxation of STAR TV's Cantonese restrictions? Can relaxation of the Cantonese restrictions be tied into a simultaneous award of a license for STAR TV to undertake subscription programming? If so, through which legislative/administrative avenues?

Network/Operations

Dave Ottavio believes that signal degradation is going to be worse than expected at 29GHz. The quality of the picture is paramount in the consumer's perception of value and loyalty. Therefore, recommend we proceed with 12Ghz option.

UIH is coming into the venture on the understanding that Wharf Cable will, in the long run, be converting to an all-fiber network. Understood that our fiber network will, in the initial stage, replace our microwave links to encompass a fiber backbone.

Sharing of access with SMATV - a very crucial issue with UIH. Believes that Wharf Cable should become the sole distributor of video signals to the home. Concept is based on the belief that as a subscription service, customers will look towards Wharf Cable to fix any outages and/or problems with reception regardless of who actually owns/maintains the network plant.

Our inability to respond to any problems will result in disconnection of our service. Recommend that we strike a deal with STAR TV to carry their signals as a part of our service package, but without the option to have the service exist as a separate tier. What are the legal hurdles for our simply picking-up the non-subscription STAR feeds in the same manner that we would provide carry for TVB and ATV?

Operator ownership of decoder equally important. UIH believes that we can easily justify the additional capital expenditures. Suggest that we can recoup investment by way of expiring deposits and/or charging installation fees. The key is to ensure that there are as few barriers as possible for the consumer to receive cable service.

On the issue of the actual decoder box, UIH believes that the Smartcard is an expensive form of security to maintain. Smartcard may also have been broken in Sweden. We should check with SKY. No such thing as absolute security. Recommend that we use market tactics to defeat/"burn" potential thieves. Should definitely opt for a "baseband" scrambling system. Jerrold was thought to be more flexible on terms than SA. We can also expect to obtain written forms of guarantees from our suppliers on security issues or commitments to new product upgrades.

Programming

UIH cannot understand why we are wedded to 20 channels. Believes that 20 channels is an enormous initial undertaking and, given the low cable sophistication of H.K. viewers, maybe only 10 channels are required. Most UIH systems employ 10-15 channels, with additional channels possessing decreasing marginal utility.

Repetition as a concept has proven to be a turn-off. Often better to leave a channel dark than having customers encounter repeats.

Given Wharf Cable's stated strategy of catering to a unique "Hong Kong" demographic, why are so many program offerings U.S.-originated? Is the Hong Kong phenomenon strictly a language barrier or a content barrier? - confusion

Human Resources

Believe that creative costs can quite easily get out of hand. Requires strong financial control under an individual that cannot easily be swayed or is, is fact, disinterested in programming.

800 staff for programming appears excessive.

Coordination between programming and marketing needs to come under a common head. Separation should also be achieved between programming creation and production.

UIH doubts what Wharf Cable presently has adequate operations know-how. Recommend that they source from the U.S. an executive that has experience in major urban builds and can oversee mktg., construction, operations and engineering.

Financial

10% stake appears acceptable. Major comment on J/V is desire to obtain a definite time frame for liquidity. As Wharf is truly the sole purchaser of the minority interests (other than through a public offering), suggest that UIH has a put option to Wharf after a certain number of years.

APPENDIX AL

FAX COVER FROM T. BELLIS TO E. FUNG, DATED SEPTEMBER 8, 1992, REFERRING TO A FURTHER DRAFT LETTER OF INTENT (ADD. 52; EX. 436)

HERBERT SMITH

17th Floor
Edinburgh Tower
15 Queen's Road Central
Hong Kong
Telephone 845 6639
Telex: 72266
Fax: 845 9099
DX: 9028-IC

8th September, 1992

FAX ADVICE

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We are transmitting on Ricoh Fax Group 3. Our fax number is 845 9099.

TO	:	Emil D.Y. Fung, Vice-President - Commercial Wharf Communications Investments Limited
CC	:	Stephen Ng (736 3003)
FAX NO.	:	736 3003
FROM	:	Tim Bellis
TOTAL PAGES (incl. this one):		6

Dear Emil,

Wharf Cable

I refer to our telephone conversation yesterday afternoon and new enclose a revised draft of the letter of intent with the amendments from the previous draft marked in black.

Please let me know whether the amendments correctly reflect the points which you were wanting to incorporate in the letter. In particular, I am not certain how we left the discussion of the definition of "affiliate". For the purpose of determining transfers between members of the Group you would want the definition as narrow as possible. However, for the purposes of your right to approve the admittance of a new shareholder and the non-competition undertaking you would wish the definition as widely drawn as possible. In these circumstances do you think it better not to attempt a definition in the letter of intent?

I look forward to receiving your comments on the draft letter and in particular receiving the list of special resolution approvals prepared by Monica. If you have difficulty locating Monica's list, we have our own here which could be annexed instead.

Kind regards,

Yours sincerely,

Tim Bellis

APPENDIX AM

CORRESPONDENCE FROM T. BELLIS TO E. FUNG, DATED SEPTEMBER 16, 1992, ANNEXING A REVISED DRAFT SHAREHOLDERS' AGREEMENT (*SEE* P.APP. Q) (ADD. 64; EX. 470)

HERBERT SMITH

17th Floor
Edinburgh Tower
15 Queen's Road Central
Hong Kong
Telephone 845 6639
Telex: 72266
Fax: 845 9099
DX: 9028-IC

H53/303382777

16th September, 1992

BY HAND

Emil D.T. Fung
Vice President - Commercial
Wharf Communications Investments Limited
16th Floor
Ocean Centre
Harbour City
Kowloon
Hong Kong

Dear Emil,

Wharf Cable

Following our meeting yesterday afternoon, I now enclose a revised draft of the Shareholders' Agreement amended to take account of the comments which we discussed and which were raised by Monica and UIH's lawyer. Given that these amendments are reasonably substantial I have not black-lined them as I believe the document needs to be reviewed again as a whole.

I confirm that I shall be free to attend a meeting on Friday, 18th September at 9:00 a.m. at these offices.

Kind regards,

Yours sincerely,

Tim Bellis

cc: Stephen Ng, Wharf Communications Investments Limited
Tom Hope, Linklaters & Paines
Henry Van der Mark, NYNEX Network Systems Company

CONFIDENTIAL

APPENDIX AN

FAX COVER FROM T. BELLIS TO D. OSWALD, DATED SEPTEMBER 16, 1992, REFERRING TO A FURTHER DRAFT LETTER OF INTENT (ADD. 120; WC02066; EX. 475)

HERBERT SMITH

17th Floor
Edingburgh Tower
15 Queen's Road Central
Hong Kong
Telephone 845 6639
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16th September, 1992

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We are transmitting on Ricoh Fax Group 3. Our fax number is 845 9099.

TO	:	Don Oswald, NYNEX Network Systems Company NYNEX Network Systems Company, Hong Kong Attn: Henry Van de Mark
FAX NO.	:	002 1 914 697 9520 810 1422
FROM	:	Tim Bellis

TOTAL PAGES
(incl. this one): 7

Wharf Cable

Please see the attached latest version of the letter of intent.

APPENDIX AO

FAX COVER FROM T. BELLIS TO E. FUNG, DATED SEPTEMBER 19, 1992, REFERRING TO A FURTHER DRAFT LETTER OF INTENT (ADD. 127; UIH002578; EX. 493)

HERBERT SMITH

17th Floor
Edinburgh Tower
15 Queen's Road Central
Hong Kong
Telephone 845 6639
Telex: 72266
Fax: 845 9099
DX 9028-1C

Our Ref R53/30338277

Date 19th September, 1992

BY FAX (736 3003)

Emil D.Y. Fung
Vice President - Commercial
Wharf Communications Investments Limited
16th Floor
Ocean Centre
Harbour City
Kowloon
Hong Kong

Dear Emil,

Wharf Cable

Following yesterday's meeting I now enclose a revised draft of the letter of the intent marked in black to show the amendments from the previous draft.

I hope that I have correctly reflected all the comments which were made and accepted at yesterday's meeting, in particular those made by Henry Van Demark.

I am sending a copy of this fax and its enclosure direct to Henry, Sonjia and Bill.

Kind regards,

Yours sincerely,

Tim Bellis

cc: Henry Van Demark, NYNEX Network Systems Company (810 1420)
Sonjia Norman, Bill Pittman, UIH (849 6564)

APPENDIX AP

FAX COVER FROM T. BELLIS TO E. FUNG, DATED SEPTEMBER 19, 1992, REFERRING TO A FURTHER DRAFT LETTER OF INTENT (ADD. 134; WC02055; EX. 496)

HERBERT SMITH

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Fax: 845 9099
DX 9028-1C

Our Ref 853/30338277

Date 19th September, 1992

BY FAX (736 3003)

Emil D.Y. Fung
Vice President - Commercial
Wharf Communications Investments Limited
16th Floor
Ocean Centre
Harbour City
Kowloon
Hong Kong

Dear Emil,

Wharf Cable

Following yesterday's meeting I now enclose a revised draft of the letter of intent marked in black to show the amendments from the previous draft.

I hope that I have correctly reflected all the comments which were made and accepted at yesterday's meeting, in particular those made by Henry Van Demark.

I am sending a copy of this fax and its enclosure direct to Henry, Sonjia and Bill.

Kind regards,

Yours sincerely,

Tim Bellis

cc: Henry Van Demark, NYNEX Network Systems Company (810 1420)
Sonjia Norman, Bill Pittman, UIH (849 6564)

APPENDIX AQ

FAX COVER FROM T. BELLIS TO E. FUNG, DATED SEPTEMBER 19, 1992, REFERRING TO A FURTHER DRAFT LETTER OF INTENT AND A REVISED MEMORANDUM OF UNDERSTANDING (MOU) (ADD. 141; WC06740; EX. 498)

Herbert Smith
17th Floor
Edinburgh Tower
15 Queen's Road Central
Hong Kong
Telephone 845 6639
Telex: 72266
Fax: 845 9099
DX: 9028-1C

Our ref: H53/30338277

Date: 19th September, 1992

Emil – we discussed

BY FAX (736 3003)

Stephen

This is the latest MOU.
Can you review our position
subject to my comments herein?
Thanks,
E

Emil D.Y. Fung
Vice President - Commercial
Wharf Communications Investments Limited
16th Floor
Ocean Centre
Harbour City
Kowloon
Hong Kong

Dear Emil:

Wharf Cable

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I am sending a copy of this fax and its enclosure direct to Henry, Sonjia and Bill.

Kind regards,

Yours sincerely,

① *When do we sign?*

② *UIH finance?*

Tim Bellis

cc: Henry Van Demark, NYNEX Network Systems Company (810 1420)
Sonjia Norman, Bill Pittman, UIH (849 6564)

APPENDIX AR

FAX FROM S. NORMAN TO M. FRIES, DATED NOVEMBER 9, 1992, REGARDING REVISIONS TO SHAREHOLDERS' AGREEMENT (ADD. 311; UIH002799; EX. 733)

FAX TRANSMISSION

TO: Mike Fries
UIH - Denver, U.S.A.
FAX #: 303 770 3454

DATE: 9 November 1992

FROM: Sonjia Norman
UIH-Asia, Hong Kong
FAX #: 852 735 7882

SUBJ: Hong Kong Shareholders' Agreement

TOTAL # OF PAGES: 1

Dear Mike:

Have just spoken to Emil about the Hong Kong Shareholders' Agreement. Apparently, Tim Bellis is preparing another version this week which is essentially the same as the previous version but they have deleted the condition of award license paragraph. Emil said that although NYNEX wanted to finalize terms by the end of November, the operational budgets would realistically not be ready until December. I mentioned that you still had substantive comments to make on the agreement.

He asked me to let you know that Don Oswald (NYNEX) has accepted that NYNEX's 20% portion on the cable side amounts to US $135 million without debt.

Regards,

Sonjia

APPENDIX AS

EXCERPT FROM UIH MEMORANDUM FROM M. FRIES TO G. SCHNEIDER *ET AL.*, DATED NOVEMBER 9, 1992 (ADD. 312-15; UIH005832-35; EX. 734)

UNITED INTERNATIONAL HOLDINGS
MEMORANDUM

November 9, 1992

TO: G. Schneider, B. Elsner, M. Schneider, D. D' Ottavio, B. Hudon

FROM: M. Fries

SUBJECT: Summary of Asian Trip and Action Items

COPIES: B. Pittman, B. Dvorak

The following memo identifies, by country, certain key meetings held during the weeks of October 19th and 26th in Asia and summarizes the resulting action items.

As you are all aware, the issue of "resources" is one of the most important subjects on the agenda. It applies to all of our activities worldwide, both development and operations. In this regard, you will find a memo prepared by Bill Pittman describing a proposed organizational/resource structure for UIH Asia.

HONG KONG - PROJECT

1. **Management**

   UIH personnel are assisting in the development of an investment model and implementation plan for the HK project (as outlined below):

   - ***Key Issues:***

   a. Need to better define the roles and responsibilities of UIH personnel vs. existing Wharf consultants.

2. **Investment Model**

   Current deadline for a revised Investment Model is November 30th. Wharf has asked that each area

(Programming, Network and Marketing) reduce annual spending by set figures (see attached memo from Steve Moss). Based on these cuts, the total investment would decline from $645 million to $563 million (reduction of $92 million or 13%) over the life of the project.

2. **Investment Model (Continued)**

- ***Critical path for Investment Model:***

  a. Budget reductions issued to team — Nov. 9

  b. Revised plans submitted to group — Nov. 20

  c. Group review — Nov. 20-30

  d. Final plans prepared — Nov. 30

- ***Key Issues:***

  a. Budget reductions were prepared on top down basis.

  b. UIH team believes reductions in programming are not sufficient.

  c. Reductions in Network and Marketing appear achievable.

  d. No adjustments to the revenue side have been made.

  e. IRR's only increase by an average of 6 points.

  f. Deadline for Investment Model is very aggressive.

- ***Action Items:***

  a. Schedule Booth/Spangler to review revised programming models in Hong Kong.

  b. Fries to review all plans Nov. 20-30 in Hong Kong.

c. Continue to drive cost reductions in equipment (subscriber management systems, decoder selection, MMDS equipment).

d. Continue to drive cost reductions in construction costs (Crow Maunsell, internal wiring strategy).

e. Focus on reducing cost/sale on marketing side.

f. Review staffing levels in all areas.

g. Firm up financing (debt) expectations.

h. Initiate review of revenue projections, eg: Star TV, pricing, packaging, decoder sales vs. rental, resulting penetrations, etc.

i. Review timing of final model with Stephen/Emil.

3. **Implementation Plan**

Primary focus of implementation team is vendor selection and staffing.

- ***Vendor Selection - Key Issues:***

a. Marconi: MMDS transmitters and receivers.

b. Decoders: Jerrold vs. S/A vs Videocrypt. UIH pushing for Jerrold baseband. Wharf consultants want Jerrold "line manipulation".

- ***Vendor Selection - Key Issues (Continued):***

c. Crow Maunsell contract: civil construction, internal building, project mgt. Maximize proper control of project management.

d. SMS: Cabledata and DEC. Active vendor bidding ongoing.

- ***Vendor Selection - Action Items:***

  a. Decoders: Force analysis of availability vs. security vs. cost. D'Ottavio/G. Schneider to intervene?

  b. Crow Maunsell: Civil construction only. Subcontract wiring and maintain in-house project management.

  c. SMS: P. Case to stay involved; approve final selection.

  d. Facilitate/push for all key decisions to be made by December 15th.

- ***Staffing - Key Issues:***

  a. Management search for: COO, VP Marketing, Construction Mgr and VP Engineering

  b. George Taylor in today.

- ***Staffing - Action Items:***

  [D'Ottavio to update]

4. **Franchising**

All franchising activities proceeding as planned.

- ***Timing for License:***

  a. KPMG issues report to government — Nov. 12

  b. KPMG presentation to government — Nov. 23

  c. Government awards license — Dec. 15

  d. License negotiation — Dec. 15 - Jan. 15

  e. License issued — Jan. 15

5. **Shareholders' Agreement**

The parties tentatively agreed to complete negotiation of shareholders' agreement by November 30 (conditional upon license award, etc.).

5. **Shareholders' Agreement (Continued)**

- ***Key Issues:***

  a. Ownership

  b. UIH/NYNEX Relationship

  c. Minority Shareholder Protections

  d. Liquidity

  d. Telecom Commitment - Project team formed to prepare application for Jan. 15 submittal. Business plans to be issued next week. All CATV shareholders will commit to Telecom project and be diluted in total project if they don't fund.

- ***Action Items:***

  a. Wharf to prepare first draft.

  b. Fries to negotiate during Nov. 20-30 in Hong Kong.

APPENDIX AT

FAX FROM S. NG TO M. SCHNEIDER,
DATED FEBRUARY 27, 1993
(ADD. 396; WC00870; EX. 1075)

Wharf Cable

Stephen T. H. Ng
Deputy Chairman and
Managing Director

VIA FACSIMILE (303-770-3464)

February 27, 1993

Mr. Mark Schneider
United International Holdings, Inc.
4643 S. Ulster, Suite 1300
Denver, Colorado 80237
U.S.A.

Dear Mark,

I can now respond to your earlier memorandum:

1. We are making good progress both in the TV Operations group and the Cable Operations group. The suggested visit in mid-March will probably be timely. I await your confirmation and please let me have itineraries soonest for arrangements to be made.

2. I mentioned to you in London that, given the NYNEX situation, we should put ownership issues on hold until after service launch.

3. We too believe we can get some debt financing but in our view the best time to market Wharf Cable to lenders is when we have launched and penetrated the market successfully, i.e. next year. Until then, our focus will be on getting vendor financing but we have only had limited success.

4. We find ourselves in a very difficult and uncomfortable position regarding programming, constrained expressly as we are by the suppliers on the one hand and desiring to

obtain advice from you on the other. I did ask Mark Booth to help me on CNN and ESPN earlier. I know Emil has also asked Mark for some help on the movie channel. We await advice. -

5. We can talk about the separate programming entity TV Operations group once more when you get here but it would be useful to get your thoughts on how it should be structured vis-a-vis the Cable Operations group which I requested previously. Emil and Mark also talked about this a couple of weeks ago. I can bring you up-to-date on TVB as well.

I look forward to your response.

Stephen Ng

c.c.: Emil Fung

APPENDIX AU

LETTER FROM M. FRIES TO E. FUNG, DATED APRIL 30, 1993 (ADD. 398-99; WC00175-76; EX. 1152)

AU-1

UNITED
INTERNATIONAL
HOLDINGS, INC.

April 30, 1993

Mr. Emil Fung
Wharf Cable Limited
16th Floor, Ocean Centre
Harbour City, Kowloon
Hong Kong

Dear Emil:

When we last met in Hong Kong we agreed that we would try to formalize the Wharf/UIH relationship by the end of April. As my schedule has been fairly hectic, and your too I assume, we have bumped up against this date. In an effort to move this forward, I have attached a draft memorandum of understanding (MOU) which is based on the draft letter of intent from last summer. I am trying to arrange a trip through Hong Kong in the next two weeks during which I would like to try to firm up the MOU and maybe even finalize it.

Several issues have surfaced during our internal review of this document which I would like to bring to your attention. These matters will become apparent to you when you consider the attached MOU but I wanted to expand upon them here for your benefit.

1. Ownership: We left the issue of UIH's ownership in Stephen's hands. He was to bring this up at the next Wharf board meeting. Since we have not heard from you on this we have changed UIH's ownership right to include "up to 20%". Has there been any further discussion of the matter?

2. Financing: As we have discussed many times, the issue of debt financing is a very important one for UIH. It will almost certainly complicate our fund raising efforts if we cannot specify the expected equity capitalization of the project. Similarly, since we all believe that some amount of debt financing will be available, it would be disadvantageous for us to raise capital for 100% of the project, only later to find out that less is required. We have some specific ideas on this subject which Bill Hudson and I will discuss with you directly.

3. Governance: With respect to board and shareholder votes, we have taken the original list of supermajority matters and altered it slightly. Although there are only two shareholders we have kept the concept of supermajority to include consent from your directors and one of the other shareholders.

4. Capitalization: This issue is tied to financing. Our view is that all parties should agree on a business plan first, and that the business plan should be as specific as possible as to maximum equity capitalization. If more equity is required beyond this amount, it can be provided as shareholder loans if all parties don't agree.

I am sure there will be other issues to discuss once you have had a chance to review this. We tried to retain as much as possible from the original document but, as you will agree, we are in a very different situation now.

I hope everything else is going well with you and I look forward to getting together in the next couple of weeks. I will advise you of my schedule as soon as it is finalized..

Best personal regards,

Michael T. Fries
Senior Vice President

cc: Mark Schneider
Ellen Spangler
Bill Hudson
Stephen Ng
Tim Bellis